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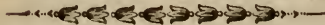
SPEECHES, &c.

RELATIVE, OR HAVING AFFINITY, TO THE

TREATY WITH GREAT BRITAIN.



VOLUME III.



60283

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—NOVEMBER 28, 1795.—

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Dec 14, 1922

Arthur Ellis Flowers Jan

American Remembrancer, &c.

FROM THE PETERSBURG INTELLIGENCER.

To the Independent Citizens of Virginia.

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THE president of the United States, in his letter to the selectmen of Boston, dated 28th of July, 1795, copies whereof have since been transmitted to similar meetings of the people in other parts of the United States, having, as it is conceived, virtually refused to view the representation of the people as a source of information worthy of his consideration, in deliberating upon the propriety of ratifying or rejecting the late treaty between Great Britain and the United States, as recommended by the senate—and having, as it is believed, first refused his consent thereto, until Great Britain should withdraw her infamous orders for seizing provisions in American vessels bound to France—and since that time, during the continuance of the same orders, in the midst of numerous representations from the people in almost all parts of the United States, disapproving the fatal instrument, having actually proceeded to its ratification, and given it all the energy which his constitutional functions could effect; and having, by these proceedings, rendered all further representations and applications to him, upon the subject, absurd and nugatory—It is important, when such inattention to the public voice is manifested, that the people should boldly exercise their right of addressing their objections to all other constituted authorities, within the United States, who possess any agency relative to this highly interesting subject.

Upon this principle, the following Petition to the General Assembly of Virginia, in virtue of their constitutional right of appointing senators for this state, to the congress of the United States, is submitted to the independent citizens thereof. It is presumed, that the time, previous to the meeting of the assembly, is too short to afford that general circulation of the petition throughout the state, which is desirable: but it is hoped, that such patriotic citizens, as may approve its contents, will be active in favoring their fellow citizens with an opportunity of testifying, in like manner, their approbation, by their respective subscriptions thereto.

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Through these means, one more effort may be made, by a declaration of the public sentiment, to prevent the final ratification and ultimate energy of an instrument, which is deemed fatal to the interests, the happiness, and perhaps, finally, to the liberty and independence of the United States.

October 12, 1795.

To the General Assembly of the Commonwealth of Virginia.

The Memorial and Petition of the Subscribers thereof,

Respectfully sheweth—

THAT they have seen and maturely considered the treaty, lately negotiated with Great Britain, and conditionally ratified by the president and senate of the United States.

That they infer, from the nature of the condition annexed to the ratification, that the said treaty ought to receive, and must again receive, the sanction of the constituted authorities, before it can be finally binding on the United States; in as much as the indeterminate suspension of that part of the treaty, which relates to the trade between the United States and the West Indies, must be made determinate, in the new article proposed to be added; and in as much as the connexion established by that article, between the parts suspended, and the temporary residue of the treaty, constitute them essentially conditions of each other, and must involve the latter in the fate of the former, whereby a change will be made, both in the form and substance of the instrument, that will be equivalent to a new compact.

That in the present stage of the transaction, they deem it their right and their duty, to pursue every constitutional and proper mode of urging those objections to the treaty, which, in their judgment, require to be entirely removed, before it ought to be finally established.

That under this conviction, they submit the following observations to the consideration of the general assembly.

I. Even "waving the merits of the respective complaints and pretensions of the two parties," as to the inexecution of the treaty of peace, it is reasonable to view the two parties as equally culpable, or equally blameless, and to determine that the exe-

cation of the treaty of peace equally by both ought to have been provided for. Yet, whilst the United States are to comply, in the most ample manner, with the article unfulfilled by them, and to make compensation for whatever losses may have accrued from their delay; Great Britain is released altogether, from one of the articles unfulfilled by her, and is not obliged to make the smallest compensation for the damages which have accrued from her delay, in fulfilling the other.

These equitable and reciprocal claims of the United States are not even allowed the chance of arbitration.

This inequality of terms, is greatly aggravated by other concessions, on the part of the United States, which, besides adding to the violation of the constitution, artfully introduced in this treaty, may, in a great measure, defeat the good consequences of a surrender of the western posts, if that article of the treaty should be faithfully executed by Great Britain.

The British settlers and traders, within an indefinite tract of country, are allowed to retain both their land and allegiance at the same time, and consequently to keep up a foreign and hostile influence over the Indians, within the limits of the United States.

The Indians, within these limits, are encouraged to continue their trade with the British, by the permission to bring their goods, *duty free*, from Canada, where the goods being charged with no such impost as is payable on the goods of the United States, will be offered for sale with that tempting preference; a regulation also, but too likely to cloak the fraud of smuggling traders in a country otherwise favorable to them.

Under a like semblance of reciprocity, the advantage secured to the United States in the fur trade, by their possession of the carrying places, is abandoned to the superiority of British capital, and the *insecurity* of the Canada duty or duties on imposts.

A part only of the posts, harbours, and bays, of a single British province, is made free to the citizens of the United States, in consideration of a freedom of all their posts, harbours, and bays, to British subjects. The goods and merchandize of the United States not entirely prohibited by Canada (but which, in fact, are always prohibited, when partial and temporary admissions are not dictated by necessity) may be carried there in consideration of a free admission from Canada, of all goods and merchandize not entirely prohibited by the United States, where there never is, in fact, this entire prohibition. A like stipulation, liable to the like observation, is extended to the exports of the United States, and the province of Canada.

There are further instances of a nominal and delusive reciprocity.

In the case of the Mississippi, there is not even an ostensible or nominal reciprocity. The posts and places on its eastern side, are to be equally free to both parties; although the treaty itself supposes that the course of the northern boundary of the United States, will throw the British beyond the very source of that river. This item of the treaty is the more to be noticed, as a repetition and extension, under such circumstances, of the stipulated privileges of Great Britain on the Mississippi, will be construed into a partiality in the United States, to the interests and views of that nation on the American continent, not likely to conciliate those from whom an amicable adjustment of the Mississippi is expected; and was, no doubt, intended by Great Britain as a snare to our good understanding with the nation most jealous of her encroachment and aggrandizement.

II. Without remarking the inexplicit provision for redressing past spoliations and vexations, no sufficient precautions are taken against them in future. On the contrary, by omitting to provide for the respect due to sea-letters, passports and certificates, and for other customary safe-guards to neutral vessels, "a general search warrant" (in the strong, but just language of our fellow citizens of Charleston) is granted against the American navigation. Examples of such provisions were to be found in our other treaties, as well as in the treaties of other nations. And it is matter of just surprize, that they should have no place in a treaty with Great Britain, whose conduct on the seas, so particularly suggested and enforced every guard to our rights that could be reasonably insisted on.

By omitting to provide against the arbitrary seizure and imprisonment of the American seamen, that valuable class of citizens remains exposed to all the outrages, and our commerce to all the interruptions, hitherto experienced from that cause.

By expressly admitting, that provisions are to be held contraband, in cases other than when bound to an invested place, and impliedly admitting that such cases exist at present—not only a retrospective sanction may be given to proceedings against which an indemnification is claimed, but an apparent license is granted to fresh and more rapacious depredations on our lawful commerce; and facts seem to show, that such is to be the fruit of this impolitic concession. It is conceived, that the pretext, set up by Great Britain, of besieging and starving whole nations, and the doctrine grounded thereon, of a right to intercept the customary trade of neutral nations, in articles not contraband, ought never to have been admitted into a treaty

of the United States—Because, 1. It is a general outrage on humanity, and an attack on the useful intercourse of nations. 2. It appears, that the doctrine was denied by the executive, in the discussions with Mr. Hammond, the British minister, and that demands of compensation, founded on that denial, are now depending. 3. As provisions constitute not less than two-thirds of our exports, and Great Britain is nearly half her time at war, an admission of the doctrine sacrifices, in a correspondent degree, the intrinsic value of our country. 4. After a public denial of the doctrine, to admit it, in the midst of the present war, by a formal treaty, would have but too much of the effect, as well as the appearance, of voluntarily concurring in the scheme of distressing a nation, whose friendly relations to the United States, as well as the struggles for freedom in which it is engaged, give a title to every good office which is permitted by a just regard to our own interest, and not strictly forbidden by the duties of neutrality. 5. It is no plea for the measure, to hold it up as an alternative to the disgrace of being involuntarily treated in the same manner, without a faculty to redress ourselves. The disgrace of being plundered with impunity, against our consent, being, under no circumstances, so great as the disgrace of consenting to be plundered with impunity. By annexing to the implements of war, enumerated as contraband, the articles of ship timber, tar or rosin, copper in sheets, sails, hemp, and cordage, our neutral rights and national interests are still further narrowed. These articles were excluded from the contraband list, by the United States, when they were themselves in a state of war. (See ordinance relating to captures on fourth of December, 1781.) Their other treaties expressly declare them not to be contraband.

British treaties have done the same; nor, as is believed, do the treaties of any nation in Europe, producing these articles for exportation, allow them to be subjects of confiscation. The stipulation was the less to be admitted, as the reciprocity assumed by it, is a mere cover for the violation of that principle—most of the articles in question, being among the exports of the United States, whilst all of them are among the imports of Great Britain.

By expressly stipulating with Great Britain, against the freedom of enemy's property in neutral bottoms, the progress towards a complete and formal establishment of a principle in the law of nations, so favorable to the general interest and security of commerce, receives all the check the United States could give to it. Reason and experience have long taught the propriety of considering free ships as giving freedom to their car-

goes. The several great maritime nations of Europe, have not only established, at different times, by their treaties with each other, but, on a solemn occasion, jointly declared it to be the law of nations, by a specific compact, of which the United States entered their entire approbation (see their act of the 5th of October, 1780). Great Britain alone dissented. But she herself, in a variety of prior treaties, and in a treaty with France, since, has acceded to the principle. Under these circumstances, the United States, of all nations, ought to be the last to combine in a retrograde effort on this subject, as being, more than any other, interested in extending and establishing the commercial rights of neutral nations.—Their situation particularly fits them to be carriers for the great nations of Europe, during their wars; and both their situation, and the genius of their government and people, promise them a greater share of peace and neutrality, than can be expected by any other nation.—The relation of the United States by a treaty on this point, to the enemies of Great Britain, was another reason for avoiding this stipulation. Whilst British goods, in American vessels, are protected against French and Dutch captures, it was enough to leave French and Dutch goods in American vessels, to the ordinary course of judicial determination, without a voluntary, a positive, and invidious provision for condemning them. It has not been overlooked, that a clause in the treaty proposes to renew, at some future period, the discussion of the principle now settled; but the question is then to be, not only in what, but *whether in any cases*, neutral vessels shall protect enemies' property; and it is to be discussed at the same time, not whether *in any, but in what cases*, provisions, and other articles not bound to invested places, may be treated as contraband. So that when the principle is in favor of the United States, the principle itself is to be the subject of discussion; when the principle is in favor of Great Britain, the application of it only, is to be the subject of discussion.

III. Whenever the law of nations has been a topic for consideration, the result of the treaty accommodates Great Britain in relation to one, or both of the republics at war with her, as well as in the abandonment of the rights and interests of the United States.

Thus American vessels bound to Great Britain, are protected by sea papers, against French and Dutch searches; but when bound to France or Holland, are left exposed to British searches, without regard to such papers.

American provisions in American vessels, bound to the enemies of Great Britain, are left, by treaty, to the seizure and

use of Great Britain; but provisions, whether American or not, in American vessels, cannot be touched by the enemies of Great Britain.

British property, in American vessels, is not subject to French or Dutch confiscation—French or Dutch property in American vessels, is subjected to British confiscation. Articles of ship building, bound to the enemies of Great Britain for the equipment of vessels of trade only, are contraband—bound to Great Britain for the equipment of vessels of war, are not contraband.

American citizens entering as volunteers in the service of France or Holland, are punishable: but American volunteers joining the arms of Great Britain against France or Holland, are not punishable.

British ships of war, and privateers with their prizes, made on citizens of Holland, may freely enter and depart the ports of the United States; but Dutch ships of war, and privateers with their prizes, made on subjects of Great Britain, are to receive no shelter or refuge in the ports of the United States.—This advantage in war is given to Great Britain, not by a treaty prior to an existing war, but by a treaty made in the midst of war, and expressly stipulating against a like article of treaty, with the other party, for equalizing the advantage.

The article prohibiting confiscations and sequestrations, is unequal between Great Britain and the United States; American citizens have little, if any, interest in private or bank stock, or private debts, within Great Britain. So, where much would be in the power of the United States, and little in the power of Great Britain, the power is interdicted: Where more is in the power of Great Britain than of the United States, the power is unconfined. Another remark is applicable—When the modern usage of nations is in favor of Great Britain, the modern usage is the rule of the treaty; but when the modern usage is in favor of the United States, the modern usage is rejected, as a rule for the treaty.

IV. The footing on which the treaty places the subject of commerce, is liable to insuperable objections. 1. The nature of our exports and imports, compared with those of other countries, and particularly of Great Britain, has been thought, by the legislature of the United States, to justify certain differences, in the tonnage and other duties, in favor of American bottoms; and the advantage possessed by Great Britain, in her superior capital, was thought, at the same time, to require such countervailing encouragements. Experience has shown the solidity of both these considerations. The American na-

vigation has, in a good degree, been protected, against the advantage on the side of British capital, and has increased in proportion; whilst the nature of our exports, being generally necessaries, or raw materials, and our imports consisting mostly of British manufactures, has restrained the disposition of Great Britain to counteract the protecting duties afforded to our navigation. If the treaty is carried into effect, this protection is relinquished, and congress are prohibited from substituting any other. Then the British capital, having no longer the present inducement to make use of American bottoms, may be expected, in whatever hands operating, to give the preference to British bottoms.

2. The provisions of the treaty, which relate to the West Indies, where the nature of our exports and imports gives a commanding energy to our just pretensions, instead of alleviating the general evil, are a detail of particular humiliations and sacrifices. Nor will a remedy by any means be found, in a revision of that part alone of the treaty.

If Great Britain should accede to the proposition of the senate, and the treaty be finally established, without that part of it, but in all its other parts: She will, in that event, be able to exclude American bottoms altogether from the channel of intercourse, and to regulate the whole trade with the West Indies, in the manner heretofore complained of, whilst the United States will be completely dispossessed of the right and the means of counteracting monopoly, unless they submit to an universal infraction of their trade, not excepting with nations whose regulations may be reciprocal and satisfactory.

3. The treaty, not content with these injuries to the United States, in their commerce with Great Britain, provides, in the 15th article, against the improvement or preservation of their commerce with other nations, by any beneficial treaties that may be attainable.—The general rule of the United States, in their treaties, founded on the example of other nations, has been, that where a nation is to have the privileges of the most favored nations, it shall be admitted gratuitously to such privileges only as may be gratuitously granted, but shall pay, for privileges not gratuitously granted, the compensation paid by others; this prudent and equitable qualification of the footing of the most favored nation, was particularly requisite in a treaty with Great Britain, whose commercial system, in relation to other countries, being matured and settled, is not likely to be varied by grants of new privileges that might result to the United States. It was peculiarly requisite, at the present juncture, also, when an advantageous revision of the treaty

with France is said to be favored by that republic ; when a treaty with Spain is actually in negotiation ; and when treaties with other nations, whose commerce is important to the United States, cannot be out of contemplation.

The proposed treaty, nevertheless, puts Great Britain, in all respects, gratuitously, on the footing of the nations most favored, even as to the future privileges, for which the most valuable considerations may be given ; so that it is not only out of the power of the United States to grant any peculiar privileges to any other nation, as an equivalent for peculiar advantages in commerce or navigation, granted to the United States ; but every nation, desiring to treat on this subject with the United States, is reduced to the alternative, either of declining the treaty altogether, or of including Great Britain, gratuitously, in all the privileges it purchases for itself. An article of this import is the greatest obstruction, next to an absolute prohibition, that could have been thrown in the way of other treaties ; and that it was insidiously meant by Great Britain to be such, is rendered the less doubtful, by the kindred features of the treaty.

4. It can be no apology for the commercial disadvantages, that better terms could not be obtained. *If proper terms could not be obtained, at that time, commercial articles, which were no wise essentially connected with the objects of the embassy, ought to have waited for a more favorable season.* Nor is a better apology to be drawn from our other treaties. These not only avoid many of the sacrifices in the new treaty ; but the chief of them were the guarantees or the auxiliaries of our independence ; and, in that view, would have been an equivalent for greater commercial concessions than were insisted on.

V. The president and senate, by ratifying this treaty, usurp the power of regulating commerce, of making rules with respect to aliens, of establishing tribunals of justice, and of defining piracy. A formal demonstration of every part of this complex proposition is not requisite. We will prove, that this treaty is dangerous to liberty, and that the constituted authorities, who have given it their sanction, have flagrantly violated their duty, by an appeal to the constitution itself, to that explicit instrument, which we formed as the unerring guide of our representatives, but which some of them have dared to violate.

VI. A treaty, thus incompatible with our constitution, thus unequal in its conditions, thus derogating from our national rights, thus insidious in some of its objects, and thus alarming in all its operations, is not only unworthy of the voluntary

acceptance of an independent and happy people, but is an abject sacrifice, which ought to have been rejected with disdain, in the most humiliating and adverse circumstances. It is sincerely believed, that such a treaty would not have been listened to at any former period, even when Great Britain was most powerful, and the United States most feeble: *To pretend, that, however objectionable the instrument may be, it ought to be considered as the only escape from a hostile resentment of Great Britain, which would evidently be as impolitic, as it would be unjust on her part,* IS AN ARTIFICE TOO CONTEMPTIBLE TO ANSWER ITS PURPOSE. It will not easily be supposed, that a refusal to part with our rights, without equivalents, will be made the pretext of war on us; much less that such a pretext will be founded on our refusal, to mingle a sacrifice of our commerce and navigation, with an adjustment of political differences. Neither is there any evidence in history, or in human nature, that nations are to be bribed out of the spirit of encroachment and aggression, by humiliations, which nourish their pride, or by unreasonable concessions, which extend their resources and their power. To do justice to all nations—to obtain it from them by every peaceable effort, in preference to war—and to confide in this policy, for avoiding that extremity, or for meeting it with firmness, under the blessing of heaven, when it may be forced upon us, is the only course of which the United States can never have reason to repent.

The petitioners, relying on the wisdom and patriotism of the general assembly, pray that the objections to the treaty, comprised in these observations, may be taken into their serious consideration; and that such measures towards a remedy may be pursued, as may be judged most conformable to the nature of the case, and most consistent with constitutional principles.



Sophistry Detected.

[CONTINUED FROM VOL. 2. PAGE 201.]

No. II.

CAMILLUS, already proverbial for prolixity and verbosity, has gone beyond his usual tediousness on the subject of sequestration and confiscation. He has devoted

to the investigation no less than four or five entire numbers, of length sufficient to exhaust the patience of even a pensioner of Britain. But by this elaborate discussion, he has not gained a proselyte.

When he can seize a single sentiment, in any writer on the laws of nations, that favors this part of the treaty, he lays as much stress upon his opinions as the priests of Apollo ever did on the Delphian oracles. But every opinion opposed to his, however sanctioned—every fact, however well authenticated, he endeavours to invalidate or explain away.—Artful and sophist as he is, he has, by one single sentence, overturned the fabric he has expended so much time to erect. He has conceded enough to satisfy every rational man of the fallacy of his arguments. He has acknowledged, that there are cases, in which not only the sequestration, but the confiscation, of property, may be justifiable.

But lest it should be pretended, that a strained or unwarranted construction is put on his words, I shall give the sentence at length, that the reader may judge for himself: “It would have been an inestimable gem in our political constitution, had it contained a positive stipulation against such a practice (viz. that of sequestration and confiscation) except, perhaps, BY WAY OF REPRISAL FOR THE IDENTICAL INJURY, ON THE PART OF ANOTHER NATION.”

It is plainly and justly deducible from this sentence :

1st. That when any nation sequesters the property of another nation, the latter has a just right, “*by way of reprisal*,” for the identical injury” to sequester the property of the subjects of the aggressor.

2d. That when any nation confiscates the property of the subjects of another nation, that nation has a right, “*by way of reprisal*,” to sequester or confiscate the property of the subjects or citizens of the offending nation. Thus, then, there are two cases in which sequestration, and one in which confiscation, is justifiable. This might be sufficient to evince the fallacy of Camillus. But from these positions flow more satisfactory consequences.

If a nation suffers as flagrant, or a more flagrant injury, than the sequestration or confiscation of the property of her citizens, she has, *a fortiori*, a right, “*by way of reprisal*,” although not for exactly “*the identical injury*,” to sequester or confiscate the property of the citizens or subjects of the offending power.

The question is then simply this, are there any violations of the laws of nations, with respect to the rights of property, as

great or greater than the sequestration or confiscation of property? That there are, England has debarred even Camillus of the power of denying. Let us suppose, for sake of argument (*and this will surely be allowed a supposable case*) that a piratical nation, before issuing any declaration of war, clandestinely grants letters of marque and reprisal to all her vessels, and this conducted in such an artful manner as to reach all quarters of the globe about the same period, and thus render the commerce of an unsuspecting rival an inevitable prey to a band of lawless robbers. Can the Federalist, can Curtius, can Camillus, deny that this is a more heinous violation of the law of nations, and a more deep and lasting injury, than the sequestration or even confiscation of an equal value of property within the territory of the piratical nation?—Surely, if they have the audacity to deny it, they will find few of the enlightened citizens of America to coincide in opinion with them.

Suppose, further, that the aggrieved nation had, in its own territory, property of the subjects of the other nation, of equal value with that which had been thus piratically plundered, would it not be a right, nay a duty, to seize it, for the purpose of making restitution to the sufferers? Unquestionably it would.

Again, let us suppose (and this, likewise, will be allowed a *very supposable case*) the same, or any other piratical nation, to have issued orders, *on the 6th of November, 1793*, or on any other day in any other year, to her cruisers, to seize the vessels of any neutral, and carry them into her ports “*for legal adjudication*,” that the “*Algerine*” judges in her admiralty courts had construed “*legal adjudication*” to mean “*condemnation* ;” and that the neutral nation, without any real or pretended violation of the rights of neutrality, should be basely and perfidiously plundered of her property, to an incalculable amount.

Is not this a more heinous violation of the laws of nations, than would have been the sequestration of property in the country of the aggressor? Does the difference of place, in which the robbery is perpetrated, constitute any essential difference in the turpitude, the villainy of the deed? And if it be lawful, in the case of the lesser crime, to retaliate by sequestration or confiscation, can the superior enormity of the other annul the right of the sufferer?

If a robber or murderer meets me on the highway, and stabs me, am I to defend or avenge myself in no other way, than in the “*identical*” one, in which he was guilty? Am I not to attempt resistance, because I have no weapons of de-

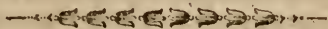
fence but pistols, and have been attacked with a sword? “Away with these absurd and incongruous sophisms! Blush, apostle of temerity, of meanness, and of deception! Why will you persevere in accumulating ridicule and contempt upon your own head?” *

The laws and modern practice of nations proscribe sequestration and confiscation of the property of the citizens or subjects of other nations within our territory. So do they equally proscribe robbery on the high seas, in time of peace. And the government that commences hostilities, by a violation of the law of nations, in either mode, has no right to complain for having justice executed, and punishment inflicted on her, by the same or any other more convenient violation of the law of nations.

By the modern laws of war, prisoners are entitled to good treatment, unless they forfeit their right, by misconduct or crime.—But suppose a nation to resort to slow but certain methods of exterminating its prisoners, such, for instance, as infected, corrupted, or even poisoned victuals—or the pestilential and destroying vapours of prison-ships (ANOTHER VERY SUPPOSABLE CASE)—is the suffering nation obliged to observe the rigid rules of the laws of war? Is it, for fear of being dishonored, to allow its best citizens to fall victims to the insatiable cruelty of a barbarous enemy? Surely not. And if a violation of the laws of war is to be punished by a similar or other violation, it is equally certain, that a violation of the laws of nations demands vengeance, in a similar manner.

T U L L Y.

[TO BE CONTINUED.]



Defence of Mr. Jay's Treaty.

[CONTINUED FROM VOL. 2. PAGE 199.]

No. XXI.

SINCE the closing of my last number, I have accidentally turned to a passage of *Vattel*, which is so pertinent to the immediate subject of that paper, that I cannot refrain from inter-

* See Camillus No. 18,

rupting the progress of the discussion, to quote it; it is in these words (b. 3. ch. 4. sect. 63.) "The sovereign, declaring war, can neither detain those *subjects* of the enemy, who are within his dominions at the time of the declaration, nor *their effects*. They came into his country *on the public faith*. By permitting them to enter his territories, and continue there, he tacitly promised them liberty, and security for their return." This passage contains, explicitly, the principle which is the general basis of my argument, namely, that the permission to a foreigner to come with his effects into, and acquire others within, our country, in time of peace, virtually pledges the public faith for the security of his person and property, in the event of war. How can this be reconciled with the *natural* right (containing, also, by the customary law of nations) which this *violates*, to confiscate the debts due by the subjects of a state to its enemies? I ask once more, can there be a natural right to do that which includes a violation of faith?

It is plain, to a demonstration, that the rule laid down in this passage, which is so just and perspicuous as to speak conviction to the heart and understanding, unites the natural with the customary law of nations, in a condemnation of the pretension to confiscate or sequester the private property of our enemy, found in our country at the breaking out of a war.

Let us now proceed to examine the policy and expediency of such a pretension.

In this investigation, I shall assume, as a basis of argument, the following position, *That it is advantageous to nations to have commerce with each other.*

Commerce, it is manifest, like any other object of enterprise or industry, will prosper in proportion as it is secure. Its security, consequently, promoting its prosperity, extends its advantages. Security is indeed essential to its having a due and regular course.

The pretension of a right to confiscate or sequester the effects of foreign merchants, in the case in question, is, in its principle, fatal to that necessary security. Its free exercise would destroy external commerce; or, which is nearly the same thing, reduce it within the contracted limits of a game of hazard, where the chance of large profits, accompanied with the great risks, would tempt alone the adventurous and the desperate. Those enterprises, which, from circuitous or long voyages, slowness of sales, incident to the nature of certain commodities, the necessity of credit, or from other causes, demand considerable time for their completion, must be re-

nounced. Credit, indeed, must be banished from all the operations of foreign commerce; an engine, the importance of which, to its vigorous and successful prosecution, will be doubted by none, who will be guided by experience or observation.

It cannot need amplification, to elucidate the truth of these positions. The storms of war occur so suddenly and so often, as to forbid the supposition, that the merchants of one country would trust their property, to any extent, or for any duration, in another country, which was in the practice of confiscating or sequestering the effects of its enemies, found within its territories, at the commencement of a war. That practice, therefore, would necessarily paralyze and wither the commerce of the country in which it obtained. Accordingly, nations attentive to the cultivation of commerce, which formerly were betrayed, by temporary considerations, into particular instances of that atrocious practice, have been led, by the experience of its mischiefs, to abstain from it in later times. They saw that to have persisted in it would have been to abandon competition on equal terms, in the lucrative and beneficial field of commerce.

It is no answer to this, to say that the exercise of the right might be ordinarily suspended, though the right itself might be maintained, for extraordinary and great emergencies.

In the first place, as the ordinary forbearance of its exercise would be taken by foreigners for evidence of an intention never to exercise it, by which they would be enticed into large deposits, that would not otherwise have taken place; a departure from the general course would always involve an act of treachery and cruelty.

In the second place, the *possibility* of the occasional exercise of such a right, if conceived to exist, would be, at least, a slow poison, conducing to a sickly habit of commerce; and, in a series of time, would be productive of much more evil than could be counterbalanced by any good which it might be possible to obtain in the contemplated emergency, by the use of the expedient.

Let experience decide—Examples of confiscation and sequestration have been given—When did the dread of them prevent a war? when did it cripple an enemy, so as to disable him from exertion, or force him into a submission to the views of his adversary? When did it even sensibly conspire to either of these ends? If it has ever had any such effect, the evidence of it has not come within my knowledge.

It is true, that between Great Britain and the United States, the expectation of such effects is better warranted than perhaps in any other cases that have existed ; because we commonly owe a larger debt to that country, than is usual between nations, and there is a relative state of things, which tends to a continuation of this situation.

But how has the matter operated hitherto ? In the late war between the two countries, certain states confiscated the debts due from their citizens to British creditors, and these creditors actually suffered great losses. The British cabinet must have known, that it was possible the same thing might happen in another war, and on a more general scale ; yet the appearances were extremely strong, at a particular juncture, that it was their plan, either from ill-will, from the belief that popular opinion would ultimately drag our government into the war, from the union of these two, or from other causes, to force us into hostilities with them. Hence it appears, that the apprehension of acts of confiscation, or sequestration, was not sufficient to deter from hostile views, or to insure pacific dispositions.

It may be pretended, that the menace of this measure, had a restraining influence on the subsequent conduct of Great Britain. But if we ascribe nothing to the measures which our government actually pursued, under the pressure of the provocations received, we at least find, in the course of European events, a better solution of a change of policy in the cabinet of Great Britain, than from the dread of a legislative piracy on the debts due to their merchants.

The truth unfortunately is, that the passions of men stifle calculation ; that nations the most attentive to pecuniary considerations, easily surrender them to ambition, to jealousy, to anger, or to revenge.

For the same reason, the actual experiment of an exercise of the pretended right, by way of reprisal for an injury complained of, would commonly be as inefficacious, as the menace of it, to arrest general hostilities.—Pride is roused ; resentment kindled ; and where there is even no previous disposition to those hostilities, the probability is, that they follow. Nations, like individuals, ill brook the idea of receding from their pretensions under the rod, or of admitting the justice of an act of retaliation or reprisal, by submitting to it. Thus we learn, from the king of Prussia himself, that the sequestration of the Silesia debt, instead of procuring the restoration for which it was designed, was on the point of occasioning an open rupture between him and Great Britain, when the super-

vention of a quarrel with France diverted the storm, by rendering him necessary as an ally.

Perhaps it may be imagined, that the practice of confiscation or sequestration would be more efficacious to wound and disable Great Britain, in case of a war, than to prevent it. But this also is a vain chimera! A nation, that can, at pleasure, raise by loan twenty millions sterling, would be in little danger of being disconcerted or enfeebled in her military enterprises, by the taking away or arresting of three or four millions due to her merchants. Did it produce distress and disorder among those whom it affected and their connexions? If that disorder was sufficient to threaten a general derangement of mercantile credit, and, with it, of the public finances, the pending war affords an example, that the public purse or credit could be brought successfully into action for the support of the sufferers. Three or four millions of exchequer bills applied in loans, would be likely to suffice, to prevent the partial evil from growing into a national calamity.

But we forget, that as far as the interruption of the payment of the debts due to her merchants could be supposed to operate upon Great Britain, war itself would essentially answer the purposes of confiscation or sequestration—By interrupting trade and intercourse, it is in fact, in a great degree, a virtual sequestration. Remittances to any extent become impracticable. There are few ways, in which, on account of the state of war, it is lawful to make them; and debtors are, for the most part, enough disposed to embrace pretenses of procrastination.

The inconvenience of deferred payment would, therefore, be felt by Great Britain, with little mitigation, from the bare existence of war, without the necessity of our government incurring the discredit and responsibility of a special interference.

Indeed, as far as the dread of eventual loss can operate, it ought, in a great measure to have its effect exclusive of the idea of confiscation. Great Britain must want reflection, not to be sensible, that, in making war upon us, she makes war upon her own merchants; by the depredations upon our trade destroying those resources from which they are to be paid. If she be indifferent to this consideration, it will be because she is governed by some motive or passion powerful enough to dispose her to run the risk of the entire loss—in the reliance of obtaining indemnification by the acquisitions of war, or in the terms of peace.

Will it be said, that the seizure of the debts would put in the hands of our government a valuable resource for carrying on the war? This, upon trial, would prove as fallacious as all the rest. Various inducements would prevent debtors from paying into the treasury. Some would decline it from conscientious scruples, from a doubt of the rectitude of the thing—others, with intent to make a merit with their creditors of the concealment, and to favor their own future credit and advantage—others, from a desire to retain the money in their own employment—and a great number, from the apprehension that the treaty of peace might revive their responsibility to the creditors, with the embarrassment to themselves of getting back, as well as they could, the monies which they had paid into the treasury. Of this, our last treaty of peace, in the opinion of able judges, gave an example.—These causes and others, which do not as readily occur, would oppose great obstacles to the execution of the measure.

But severe laws, inflicting heavy penalties, might compel it—Experience does not warrant a sanguine reliance upon this expedient, in a case in which great opportunity of concealment is united with strong motives of inclination or interest—It would require an inquisition, justly intolerable to a free people—penalties, which would confound the due proportion between crime and punishment, to detect, or to deter from concealment and evasion, and to execute the law—Probably no means less efficacious than a *revolutionary tribunal* and a *guillotine* would go near to answer the end.—There are but few, I trust, to whom these would be welcome means.

We may conclude, therefore, that the law would be evaded to an extent, which would disappoint the expectations from it, as a resource. Some monies, no doubt, would be collected; but the probability is, that the amount would be insignificant, even in the scale of a single campaign—But, should the collection prove as complete, as it ordinarily is, between debtor and creditor, it would little, if at all, exceed the expense of one campaign.

Hence we perceive, that, regarding the measure, either as a mean of disabling our enemies, or as a resource to ourselves, its consequence dwindles, upon a close survey; it cannot pretend to a magnitude, which would apologize, either for a sacrifice of national honor or candor, or for a deviation from the true principles of commerce and credit.

But let us take a further view of its disadvantages.

A nation, in case of war, is under no responsibility for the delinquencies or frauds of its citizens, who are debtors to those

of its enemy, if it does not specially interfere with the payment of the debts which they owe. But, if it interposes its authority to prevent the payment, it gives a claim of indemnification to its adversary, for the intervening losses which those delinquencies or frauds may occasion.—Whether, on the making of peace, this would be insisted upon or waved, might depend much on the good or ill success of the war; but every thing which adds to the catalogue of our enemy's just pretensions, especially when the fortune of war has been pretty equal, is an evil, either as an additional obstacle to speedy peace, or as an ingredient to render the terms of it less advantageous to ourselves. And it is, therefore, unwise in a government to increase the list of such pretensions, by a measure, which, without utility to itself, administers to the indolence of negligent, and to the avidity of fraudulent, individuals.

Further—Every species of reprisal or annoyance, which a power at war employs, contrary to liberality or justice, of doubtful propriety, in the estimation of the law of nations, departing from that moderation, which, in latter times, serves to mitigate the severities of war, by furnishing a pretext or provocation to the other side to resort to extremities; serves to embitter the spirit of hostilities, and to extend its ravages. War is then apt to become more sanguinary, more wasting, and every way more destructive. This is a ground of serious reflection to every nation, both as it regards humanity and policy; to this country it presents itself, accompanied with considerations of peculiar force. A vastly-extended sea-coast, overspread with defenceless towns, would offer an abundant prey to an incensed and malignant enemy, having the power to command the sea. The usages of modern war forbid hostilities of this kind; and though they are not always respected, yet, as they are never violated, unless by way of retaliation for a violation of them on the other side, without exciting the reprobation of the impartial part of mankind, sullying the glory, and blasting the reputation of the party which disregards them, this consideration has, in general, force sufficient to induce an observance of them. But the confiscation or sequestration of private debts, or private property in public funds, now generally regarded as an odious and unwarrantable measure, would, as between us and Great Britain, contain a poignant sting. Its effect to exasperate, in an extreme degree, both the nation and government of that country, cannot be doubted. A disposition to retaliate, is a natural consequence; and it would not be difficult for us to be made to suffer beyond any possible degree of advantage to be derived from the occasion of the retaliation.

It were much wiser to leave the property of British subjects, an untouched pledge for the moderation of its government, in the mode of prosecuting the war.

Besides (as, if requisite, might be proved from the records of history) in national controversies, it is of real importance to conciliate the good opinion of mankind; and it is even useful to preserve or gain that of our enemy. The latter facilitates accommodation and peace; the former attracts good offices, friendly interventions, sometimes direct support, from others.—The exemplary conduct, in general, of our country, in our contest for independence, was probably not a little serviceable to us in this way; it secured, to the intrinsic goodness of our cause, every collateral advantage, and gave it a popularity among nations, unalloyed and unimpaired, which even stole into the cabinets of princes. A contrary policy tends to contrary consequences. Though nations, in the main, are governed by what they suppose their interest, he must be imperfectly versed in human nature, who thinks it indifferent, whether the maxims of a state tend to excite kind or unkind dispositions in others, or who does not know, that these dispositions may insensibly mould or bias the views of self-interest.—This were to suppose that rulers only reason—do not feel; in other words, are not men.

Moreover, the measures of war ought ever to look forward to peace. The confiscation or sequestration of the private property of an enemy must always be a point of serious discussion, when interest or necessity leads to negotiations for peace. Unless when absolutely prostrate by the war, restitution is likely to constitute an ultimatum of the suffering party. It must be agreed to, or the war protracted, and at last, it is probable, it must still be agreed to. Should a refusal of restitution prolong the war for only one year, the chance is, that more will be lost than was gained by the confiscation. Should it be necessary finally to make it, after prolonging the war, the disadvantage will preponderate in a ratio to the prolongation. Should it be, in the first instance, assented to, what will have been gained? The temporary use of a fund of inconsiderable moment, in the general issue of the war, at the expense of justice, character, credit, and, perhaps, of having sharpened the evils of war. How infinitely preferable to have drawn an equal fund from our own resources, which, with good management, is always practicable!—If the restitution includes damages, on account of the interference, for the failures of individuals, the loan will have been the most costly that could have been made. It has been elsewhere observed, that our treaty of peace with

Great Britain gives an example of restitution. The late one between France and Prussia gives another. This must become every day more and more a matter of course, because the immunity of mercantile debts becomes every day more and more important to trade, better understood to be so, and more clearly considered as enjoined by the principles of the law of nations.

Thus we see, that in reference to the simple question of war and peace, the measure of confiscation or sequestration is marked with every feature of impolicy.

We have before seen, that the pretensions of a right to do the one or the other, has a most inimical aspect towards commerce and credit.

Let us resume this view of the subject. The credit, which our merchants have been able to obtain abroad, essentially in Great Britain, has, from the first settlement of our country to this day, been the animating principle of our foreign commerce. This every merchant knows and feels;—and every intelligent merchant is sensible, that, for many years to come, the case must continue the same. This, in our situation, is a peculiar reason, of the utmost force, for renouncing the pretension in question.

The exercise of it, or the serious apprehension of its exercise, would necessarily have one of two effects.—It would deprive our merchants of the credit, so important to them, or it would oblige them to pay a premium for it, proportioned to the opinion of the risk. Or, to speak more truly, it would combine the two effects; it would cramp credit, and subject what was given to a high premium. The most obvious and familiar principles of human action establish, that the consideration for money or property, lent or credited, is moderate or otherwise, according to the opinion of security or hazard, and that the quantity of either to be obtained, on loan or credit, is in a great degree contracted or enlarged by the same rule.

Thus should we, in the operations of our trade, pay exorbitantly for a pretension, which is of little value, or rather, which is pernicious, even in the relations to which its utility is referred. What folly to cherish it! How much greater the folly ever to think of exercising it! It never can be exercised hereafter, in our country, without great and lasting mischief.

Instead of cherishing so odious a pretension, as “our best, our only weapon of defence,”—wisdom admonishes us to be eager to cast it from us, as a weapon most dangerous to the

swearer, proscribed by the laws of nations, by the laws of honor, and by every principle of sound policy.

Every merchant ought to desire that the most perfect tranquillity, on this point, in foreign countries, should facilitate to him, on the best and cheapest terms, the credit for which he has occasion. And every other citizen ought to desire, that he may be thus freed from a continual contribution, in the enhanced price of every imported commodity he consumes, towards defraying the premium which the want of that tranquillity is calculated to generate.

CAMILLUS.

No. XXII.

THE analogy of the stipulation in the 10th article, with stipulations in our other treaties, and in the treaties between other nations, is the remaining topic of discussion. After this, attention will be paid to such observations, by way of objection to the article, as may not have been before expressly or virtually answered.

The 20th article of our treaty of amity and commerce with France, is in these words:

“ For the better promoting of commerce, on both sides, it is agreed, that if a war shall break out between the said two nations, six months, after the proclamation of war, shall be allowed to the merchants in the cities and towns where they live, for selling and transporting their goods and merchandizes; and if any thing be taken from them, or any injury be done them within that term by either party, or the people or subjects of either, full satisfaction shall be made for the same.”

The 18th article of our treaty of amity and commerce with the United Netherlands, is in these words:

“ For the better promoting of commerce, on both sides, it is agreed, that if a war should break out between their high mightinesses, the States General of the United Netherlands, and the United States of America, there shall always be granted to the subjects on each side, the term of nine months, after the date of the rupture or the proclamation of war, to the end that they may retire with their effects, and transport them where they please, which it shall be lawful for them to do, as well as to sell and transport their effects and goods, with all freedom and without any hindrance, and without being able

to proceed, during the said term of nine months, to any arrest of their effects, much less of their persons; on the contrary, there shall be given them, for their vessels and effects which they would carry away, passports and safe conducts for the nearest ports of their respective countries, and for the time necessary for the voyage."

The 22d article of our treaty of amity and commerce with Sweden, is in these words :

"In order to favor commerce, on both sides, as much as possible, it is agreed, that in case war should break out between the two nations, the term of nine months after the declaration of war shall be allowed to the merchants and subjects respectively, on one side and on the other, in order that they may withdraw with their effects and moveables, which they shall be at liberty to carry off or to sell where they please, without the least obstacle—nor shall any seize their effects, and much less their persons, during the said nine months; but on the contrary, passports, which shall be valid for a time necessary for their return, shall be given them for their vessels and the effects which they shall be willing to carry with them—and, if any thing is taken from them, or any injury is done to them by one of the parties, their people and subjects, during the term above prescribed, full and entire satisfaction shall be made to them on that account."

The 23d article of our treaty of amity and commerce with Prussia, contains this provision :

"If war should arise between the two contracting parties, the merchants of either country, then residing in the other, shall be allowed to remain nine months, to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance."

These articles of four, and the only commercial treaties we had with foreign powers, prior to the pending treaty with Great Britain, though differing in terms, agree in substance; except as to time, which varies from six to nine months. And they clearly amount to this, that upon the breaking out of a war between the contracting parties in each case, there shall be, for a term of six or nine months, full protection and security to the persons and property of the subjects of one, which are then in the territories of the other, with liberty to collect their debts,* to sell their goods and merchandizes, and to remove,

* The term "debts," is only expressed in the Prussian treaty, but there are in the other treaties, terms which include debts, and this is the manifest spirit and intent of all.

with their effects, wheresoever they please. For this term of six or nine months, there is a complete suspension of the pretended right to confiscate or sequester, giving, or being designed to give, an opportunity to withdraw the whole property which the subjects or citizens of one party have in the country of the other.

The differences between these stipulations and that in the article under examination are chiefly these: the latter is confined to debts, property in the public funds and in public and private banks, without any limitation of the duration of the protection—The former comprehends, in addition, goods and merchandizes, with a limitation of the protection to a term of six or nine months; but with the intent and supposition that the term allowed may and will be adequate to entire security. The principle, therefore, of all the stipulations is the same; each aims at putting the persons and property of the subjects of one enemy, especially merchants, being within the country of the other enemy at the commencement of a war, out of the reach of confiscation or sequestration.

The persons whose names are to our other treaties, on the part of the United States, are Benjamin Franklin, Silas Deane, Arthur Lee, John Adams, and Thomas Jefferson. The three first are to the treaty with France—Mr. Adams is singly to that with the United Netherlands—Dr. Franklin singly to that with Sweden, and these two, with Mr. Jefferson, are jointly to that with Prussia—The treaty with Sweden was concluded in April, 1783; that with Prussia, in August, 1785. These dates repel the idea, that considerations of policy, relative to the war, might have operated in the case.

We have, consequently, the sanction of all these characters to the principle, which governed the stipulation entered into by Mr. Jay, and not only from the ratification of the former treaties at different periods, distant from each other, by different descriptions of men in our public councils, but also from there never having been heard, in the community, a hiss or murmur against the stipulation, through a period of seventeen years, counting from the date of the treaty with France, there is just ground to infer a coincidence of the public opinion of the country.

I verily believe, that if, in the year 1783, a treaty had been made with England, containing an article similar to the 10th in the present treaty, it would have met with general acquiescence. The spirit of party had not then predisposed men's minds to estimate the propriety of a measure according to the agent, rather than according to its real fitness and quality.

What would then have been applauded as wise, liberal, equitable, and expedient, is now, in more instances than one, under the pestilential influence of that baleful spirit, condemned as improvident, impolitic, and dangerous.

Our treaty with Prussia, the 23d article of which has been cited, is indeed a model of liberality, which, for the principles it contains, does honor to the parties, and has been in this country a subject of deserved and unqualified admiration. It contradicts, as if studiously, those principles of restriction and exclusion, which are the foundations of the mercantile and navigating system of Europe. It grants perfect freedom of conscience and worship to the respective subjects and citizens, with no other restraint than that they shall not insult the religion of others. Adopting the rule, that free ships shall make free goods, it extends the protection to the persons as well as to the goods of enemies.—Enumerating, as contraband, only “arms, ammunition, and military stores,” it even provides that contraband articles shall not be confiscated, but may be taken on the condition of paying for them. It provides against embargoes of vessels and effects. It expressly exempts women, children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, and places, and in general, all others whose occupations are for the common subsistence and benefit of mankind, their houses, fields, and goods, from molestation in their persons and employments, and from burning, wasting, and destruction, in time of war; and stipulates payment at a reasonable price for what may be necessarily taken from them for military use.—It likewise protects from seizure and confiscation, in time of war, vessels employed in trade, and inhibits the granting commissions to private armed vessels, empowering them to take or destroy such trading vessels, or to interrupt their commerce; and it makes a variety of excellent provisions to secure to prisoners of war, a humane treatment.

These particulars are stated as evidence of the temper of the day, and of a policy, which then prevailed, to bottom our system with regard to foreign nations upon those grounds of moderation and equity, by which reason, religion and philosophy had tempered the harsh maxims of more early times. It is painful to observe an effort to make the public opinion, in this respect, retrograde, and to infect our councils with a spirit contrary to these salutary advances towards improvement in true civilization and humanity.

If we pass from our own treaties, to those between other nations, we find that the provisions, which have been extracted

from ours, have very nearly become formulas in the conventions of Europe. As examples of this may be consulted, the following articles of treaties between Great Britain and other powers (to wit) the XVIIIth article of a treaty of peace and commerce with Portugal, in 1642—the XXXVIth article of a treaty of peace, commerce, and alliance with Spain, in 1667—the XIXth article of a treaty of peace, and the II^d of a treaty of commerce with France, both in 1713, and the XIIth article of a treaty of commerce and navigation with Russia, in 1766.

The article with Portugal provides, that if difficulties and doubts shall arise between the two nations, which give reason to apprehend the interruption of commerce, public notice of it shall be given to the subjects on both sides, and after that notice, two years shall be allowed to carry away the merchandizes and goods, and in the mean time, there shall be no injury or prejudice done to any persons or goods on either side.

The articles with France, in addition to the provisions common in other cases, particularly stipulate, that during the term of the protection (six months) “the subjects on each side shall enjoy good and speedy justice, so that during the said space of six months, they may be able to recover their goods and effects, entrusted as well to the public, as to private persons.”

The article with Russia, besides stipulating an exemption from confiscation for one year, with the privilege to remove and carry away in safety, provides additionally, that the subjects of each party “shall be further permitted, either at or before their departure, to consign the effects which they shall not as yet have disposed of, as well as the debts that shall be due to them, to such persons as they shall think proper, in order to dispose of them according to their desire and for their benefit; which debts, the debtors shall be obliged to pay in the same manner as if no such rupture had happened.”

All these articles are, with those of our treaties, analagous in principle, as heretofore particularly explained, to the 10th article of the treaty under discussion. That of the British treaty with France designates expressly debts due from the *public* as well as those due from private persons. That with Russia goes the full length of our tenth article; empowering the creditors on each side to assign the debts, which they are not able to collect within the term of their residence, to whomsoever they think fit, for their own benefit, and declaring that these debts shall be paid to the assign in the same manner as if no rupture had happened.

There is a document extant, which may fairly be supposed to express the sense of the government of France, at the period

to which it relates, of the foundation of these stipulations. It is a memorial of Mr. Bussy, minister from the court of France to that of London, for negotiating peace, dated in the year 1761, and contains these passages: "As it is impracticable for two princes, who make war with *each other*, to agree between them which is the aggressor with regard to the other,* equity and humanity have dictated these precautions, that where an unforeseen rupture happens suddenly and without any previous declaration, foreign vessels, which, navigating *under the security of peace*, and of treaties, happen, at the time of the rupture, to be in either of the respective ports, shall have time and full liberty to withdraw themselves.

"This wise provision, so agreeable to the rules of good faith, *constitutes a part of the law of nations*, and the article of the treaty, which sanctifies these precautions, ought to be faithfully executed, notwithstanding the breach of the other articles of the treaty which is the natural consequence of the war.

"The courts of France and Great Britain used this salutary precaution in the treaties of Utrecht and Aix la Chapelle."

These passages place the security stipulated in the treaties for the persons and property of the subjects of one party found in the country of another; at the beginning of a war, upon the footing of *its constituting a part of the law of nations*, which may be considered as a formal diplomatic recognition of the principle for which we contend. As this position was not itself in dispute between the two governments, but merely a collateral inference from it, applicable to vessels *taken at sea*, prior to a declaration of war, it may be regarded as a respectable testimony of the law of nations on the principal point.

If the law of nations confers this exemption from seizure upon vessels, which, at the time of the rupture, happen to be in the respective ports of the belligerent parties, it is evident that it must equally extend its protection to debts contracted in a course of lawful trade. Vessels are particularly mentioned, because the discussion turned upon vessels seized at sea. But the reference to the treaties of Utrecht and Aix la Chapelle shows, that the minister, in his observation, had in view the whole subject matter of the articles of those treaties, which provide for the security of merchants and their effects in the event of war.

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* Thus we find it the sentiment of this minister, that it is *impossible* for two princes who make war with each other, to agree *which is the aggressor with regard to the other*. And yet Mr. Jay was to extort from Great Britain an acknowledgment, that *she was the aggressor with regard to us*, and was guilty of pusillanimity in waving the question.

This conformity in principle, of the article under examination, with the provisions in so many treaties of our own and of other nations, taken in connexion with the comment of Mr. Buffy, brings a very powerful support to the article. It is additional and full evidence that our envoy, in agreeing to it, did not go upon new and untrodden ground; that, on the contrary, he was in a beaten track; that, in pursuing the dictates of reason, and the *better opinion* of writers, as to the rule of the law of nations respecting the point, he was, at the same time, pursuing the examples of all the other treaties, which we had ourselves made, and of many of those of other countries.

It is now incumbent upon me to perform my promise of replying to such objections to the article as may remain unanswered by the preceding remarks. It is with pleasure I note that the field is very narrow—that, indeed, there scarcely remains any thing which is not so frivolous and impotent as almost to forbid a serious replication—It will therefore be my aim to be brief.

It is said, there is only an apparent reciprocity in the article, millions being due on our side, and little or nothing on the other.

The answer to this is, that no right being relinquished, on either side, no privilege granted, the stipulation amounting only to a recognition of a rule of the law of nations, to a promise to abstain from injustice and a breach of faith, there is no room for an argument about reciprocity further than to require that the promise should be mutual, as is the case—This is the only equivalent which the nature of the subject demands or permits—It would be dishonorable to accept a boon merely for an engagement to fulfil a moral obligation—Indeed, as heretofore intimated, the true rule of reciprocity in stipulations of treaties, is equal right, not equal advantage from each several stipulation.

But it has been shown, that the stipulation will be beneficial to us, by the confidence which it will give on the other side, obviating and avoiding the obstructions to trade, the injuries to, and incumbrances upon, credit, naturally incident to the distrust and apprehension, which, after the question had been once moved, were to be expected—Here, if a compensation were required, there is one—Let me add as a truth, which, perhaps, has no exception, however uncongenial with the fashionable patriotic creed—that, in the wise order of providence, nations, in a temporal sense, may safely trust the maxim, that

the observance of justice carries with it its own and a full reward.

It is also said, that having bound ourselves by treaty, we shall hereafter lose the credit of moderation, which would attend a forbearance to exercise the right. But it having been demonstrated, that no such right exists, we only renounce a claim to the negative merit of not committing injustice, and we acquire the positive praise of exhibiting a willingness to renounce explicitly a pretension, which might be the instrument of oppression and fraud—It is always honorable to give proof of upright intention.

It is further said, that under the protection of this stipulation the king of Great Britain, who has already *speculated in our funds* (the assertors would be puzzled to bring proof of the fact) may engross the whole capital of the bank of the United States, and thereby secure the uncontroled direction of it—that he may hold the stock in the name of his ambassador, or of some citizen of the United States, perhaps a senator, who, if of the virtuous twenty,* might be proud of the honor—that thus our citizens, in time of peace, might experience the mortification of being beholden to British directors, for the accommodations they might want—that, in time of war, our operations might be cramped at the pleasure of his majesty, and according as he should see fit or not to accommodate our government with loans—and that both in peace and war we may be reduced to the abject condition of having the whole capital of our national bank administered by his Britannic majesty.

Shall I treat this rhapsody with seriousness or ridicule?

The capital of the bank of the United States is ten millions of dollars, little short, at the present market price, of three millions of pounds sterling; but, from the natural operation of such a demand, in raising the price, it is not probable that much less than four millions sterling would suffice to complete the monopoly. I have never understood, that the private purse of his Britannic majesty, if it be true, as asserted, that he has already witnessed a relish for speculation in our funds (a fact, however, from which it was natural to infer a more pacific disposition towards us) was so very ample as conveniently to spare an item of such size for a speculation across the Atlantic. But, perhaps, the national purse will be brought to his aid—As this supposes a parliamentary grant, new taxes and new loans, it does not seem to be a very manageable thing, without dis-

* Those who advised to a ratification of the treaty.

closure of the object, and, if disclosed, so very unexampled an attempt of a foreign government would present a case completely out of the reach of all ordinary rules, justifying, by the manifest danger to us, even war and the confiscation of all that had been purchased. For let it be remembered, that the article does not protect the public property of a foreign government, prince, or state, independent of the observation just made, that such a case would be without the reach of ordinary rules. It may be added, that an attempt of this kind, from the force of the pecuniary capital of Great Britain, would, as a precedent, threaten and alarm all nations. Would consequences like these be incurred?

But let it be supposed, that the inclination shall exist, and that all difficulties about funds have been surmounted—Still, to effect the plan, there must be, in all the stockholders, a willingness to sell to the British king or his agents, as well as the will and means, on his part, to purchase. Here, too, some impediments might be experienced: there are persons who might choose to keep their property in the shape of bank stock, and live upon the income of it, whom price would not readily tempt to part with it. Besides, there is an additional obstacle to complete success:—The United States are themselves the proprietors of two millions of the bank stock.

Of two things, one, either the monopoly of his Britannic majesty would be known (and it would be a pretty arduous task to keep it a secret, especially if the stock was to stand, as suggested, in the name of his ambassador) or it would be unknown and concealed under unsuspected names: In the former supposition, the observations already made recur. There would be no protection to it from the article; and the extraordinary nature of the case would warrant any thing—Would his majesty or the parliament choose to trust so large a property in so perilous a situation?

If, to avoid this, the plan should be to keep the operation unknown, the most effectual method would be to place the stock in the names of our own citizens. This, it seems, would be attended with no difficulty; since even our senators would be ambitious of the honor: and if they should have qualms and fears, others more compliant could, no doubt, be found amongst the numerous secretaries or adherents of Great Britain in our country: probably some of the patriots would not be inexorable, if properly solicited. Or, in the last resort, persons might be sent from Great Britain to acquire naturalization for the express purpose.

In this supposition, too, the article would be at the least innocent. For its provisions are entirely foreign to the case of stock standing in the names of our own citizens. It neither enlarges nor abridges the power of the government in this respect.

Further, how will the article work the miracle of placing the bank under the management of British directors? It gives no new rights, no new qualifications.

The constitution of the bank (section the 5th, 7th of the act of incorporation) has provided, with solicitude, these important guards, against foreign or other sinister influence—1. That none but a citizen of the United States shall be eligible as a director. 2. That none but a stockholder, actually resident within the United States, shall vote in the elections by proxy. 3. That one fourth of the directors, who are to be elected annually, must every year go out of the direction. 4. That a director may, at any time, be removed and replaced by the stockholders at a general meeting. 5. That a single share shall give one vote for directors, while any number of shares, in the same person, co-partnership or body politic, will not give more than thirty votes.

Hence it is impossible, that the bank can be in the management of British directors—a British subject being incapable of being a director. It is also next to impossible, that an undue British influence could operate in the choice of directors, out of the number of our own citizens. The British king, or British subjects out of the United States, could not even have a vote by attorney, in the choice. Schemes of secret monopoly could not be executed, because they would be betrayed, unless the secret was confined to a small number. A small number, no one of whom could have more than thirty votes, would be easily over-ruled by the more numerous proprietors of single or a small number of shares, with the addition of the votes of the United States.

But here again it is to be remembered, that as to combination with our own citizens, in which they were to be offensive for any pernicious foreign project—the article under consideration is perfectly nugatory—It can do neither good nor harm, since it merely relates, as to the exemption from confiscation and seizure on our part, to the known property of British subjects.

It follows, therefore, that the dangers portrayed to us from the speculating enterprizes of his Britannic majesty, are the vagaries of an over-heated imagination—or the contrivances of a spirit of deception—and that so far as they could be supposed to have the least colour, it turns upon circumstances,

upon which the treaty can have no influence whatever. In taking pains to expose their futility, I have been principally led by the desire of making my fellow-citizens sensible, in this instance, as in others, of the extravagancies of the opposers of the treaty.

One artifice to render the article unacceptable has been to put cases of extreme misconduct, on the other side, of flagrant violations of the law of nations, of war, of justice, and of humanity; and to ask, whether, under such circumstances, the confiscation or sequestration of debts would not be justifiable?—To this the answer is, that if circumstances so extraordinary should arise, as, without the treaty, would warrant so extraordinary an act, they will equally warrant it under the treaty. For cases of this kind are exceptions to all general rules. They would excuse the violation of an express, or positive, as well as of a tacit or virtual pledge of the public faith: which describes the whole difference between the existence and non-existence of the article in question. They resemble those cases of extreme necessity (through excessive hunger, for instance) which, in the eye of the law of nature, will excuse the taking of the property of another, or those cases of extreme abuse of authority of rulers, which, amounting unequivocally to tyranny, are admitted to justify forcible resistance to the established authorities. Constitutions of government, laws, treaties, all give way to extremities of such a description—the point of obligation is, to distinguish them with sincerity, and not to indulge our passions and interests, in substituting pretended for real cases.

A writer, who disgraces by adopting the name of CICERO, makes a curious remark by way of objection. He affirms that the article is nugatory, because a treaty is dissolved by a state of war, in which state the provision is designed to operate. If this be true, the article is at least harmless, and the trouble of painting it in such terrific colours might have been spared. But it is not true. Reason, writers, the practice of all nations accord in this position, that those stipulations, which contemplate the state of war, in other words, which are designed to operate in case of war, preserve their force and obligation when war takes place.* To what end else all the stipulations which have been cited from so many treaties?†

* Vattel, B. iii ch. x.

† This writer is as profligate as he is absurd—Besides imputing to *Camillus*, in general terms, a number of things of which he never dreamt, he has the effrontery to forge, as a *literal quotation* from him (calling it his *own language* and

Previous to a conclusion I shall observe, barely with a view to accuracy, that the article leaves unprotected all vessels, goods and merchandizes, every species of property, indeed, except debts between individuals and the property of individuals in the public funds and in public and private banks. With this exception, whatever before may have been liable to confiscation or sequestration, still remains so, notwithstanding any thing contained in this article.

To over-rate the value and force of our own arguments is a natural foible of self-love—to be convinced without convincing others, is no uncommon fate of a writer or speaker—but I am more than ordinarily mistaken if every mind open to conviction, will not have been satisfied by what has been offered—that the tenth article of the treaty lately negotiated with Great Britain, does nothing but confirm, by a positive agreement, a rule of the law of nations—indicated by reason, supported by the better opinion of writers, ratified by modern usage, dictated by justice and good faith, recognized by formal acts and declarations of different nations, witnessed by diplomatic testimony, sanctioned by our treaties with other countries, and by treaties between other countries—and conformable with sound policy and the true interests of the United States.

The discussion has been drawn out to so great a length, because the objections to this article are amongst those which have been urged with the greatest warmth and emphasis against the treaty, and its vindication from them, if satisfactory, must go far towards securing to it the public suffrage. Citizens of America! it is for you to perform your part of the task, it is for you to weigh with candour the arguments which have been submitted to your judgments; to consult, without bias, the integrity of your hearts; to exile prejudice and to immolate on the altar of truth, the artifices of cabal and falsehood! There can then be no danger that patriotism will have to lament, or national honor to blush at, the sentence which you shall pronounce.

The articles, which adjust the matters of controversy between the two countries, all those which are permanent, have now been reviewed. Let me appeal to the consciences of those who have accompanied me in the review—if these articles were all

designating it by *inverted commas*) a passage respecting the impressing of seamen, which certainly not in terms, nor even in substance, upon fair construction, is to be found in any thing he has written—Not having all the numbers of *Cicero* at hand, I may mistake, in attributing to him the principal sentiment, which is from memory but I have under my eye the number which witnesses his forgery.

that composed the treaty, would it be the better, that they should exist—or that all the sources of rupture and war with Great Britain should have survived the negotiation to extinguish them, and should still actually subsist in full vigour? If every enlightened and honest man must prefer the former—then let me make another observation, and put another question. The remaining articles of the treaty, which constitute its commercial part, expire by their own limitation at the end of twelve years. It is in the power of either party, consistently with the instrument, to terminate them at the end of the expiration of *two* years after the present war between France and Great Britain.

Is it at all probable that they can contain any thing so injurious, considering the short duration, which may be given to them, as to counterbalance the important consideration of preserving peace to this young country; as to warrant the excessive clamours which have been raised: as to authorize the horrid calumnies which are vented; and to justify the systematic efforts which are in operation to convulse our country and to hazard even CIVIL WAR?*

CAMILLUS.

No. XXIII.

THE preceding articles having adjusted those controversies which threatened an open rupture between the two countries, it remained to form such dispositions relative to the intercourse, commerce, and navigation, of the parties, as should appear most likely to preserve peace, and promote their mutual advantage.

Those who have considered with attention the interests of commerce, will agree in the opinion, that its utility, as well as general prosperity, would be most effectually advanced by a total abolition of the restraints and regulations with which the jealousies and rival policy of nations have embarrassed it. But though we are not chargeable with having contributed to the establishment of these errors, so discouraging to the industry and perplexing in the intercourse of nations, we found them so deeply rooted and so extensively prevalent, that our voice

* In applying the character of dishonesty and turpitude to the principle of confiscation or sequestration—I am far from intending to brand as dishonest men all those whose opinions favour it—I know there are some ardent spirits chargeable with the error, of whose integrity I think well.

and opinions would have been little regarded, had we expressed a desire of a system more liberal and advantageous to all.

The rights of commerce among nations between whom exist no treaties, are imperfect.

"The law of nature," says Vattel, (b. 1. f. 89) "gives to no person whatever, the least kind of right to sell what belongs to him, to another who does not want to buy it; nor has any nation that of selling its commodities or merchandize to a people who are unwilling to have them. Every man and every nation being perfectly at liberty to buy a thing that is to be sold, or not to buy it, and to buy it of one rather than of another."—"Every state has constantly," continues the same author, "a right to prohibit the entrance of foreign merchandize, and the people who are interested in this prohibition have no right to complain of it."—States by convention may turn these imperfect into perfect rights, and thus a nation, not having naturally a perfect right to carry on commerce with another, may acquire it by treaty. A simple permission to trade with a nation, gives no perfect right to that trade; it may be carried on so long as permitted; but the nation granting such permission is under no obligation to continue it. A perfect right in one nation to carry on commerce and trade with another nation can alone be procured by treaty.

From the precarious nature of trade between nations, as well as from the desire of obtaining special advantages and preferences in carrying it on, originated the earliest conventions on the subject of commerce. The first commercial treaty that placed the parties on a more secure and better footing in their dealings with each other than existed in their respective intercourse with other nations, inspired others with a desire to establish, by similar treaties, an equally advantageous arrangement. Thus one treaty was followed by another, until, as was the case when the United States became an independent power, all nations had entered into extensive and complicated stipulations, concerning their navigation, manufactures and commerce.

This being the actual condition of the commercial world, when we arrived at our station in it, the like inducements to render certain that, which, by the law of nations, was precarious, and to participate in the advantages secured by national agreements, prompted our government to propose to all, and to conclude with several, of the European nations, treaties of commerce.

Immediately after the conclusion of the war, congress appointed Mr. Adams, Doctor Franklin, and Mr. Jefferson, joint

commissioners, to propose and conclude commercial treaties with the different nations of Europe. This commission was opened at Paris, and overtures were made to the different powers (including Great Britain) through their ministers residing at Paris. The basis of these numerous treaties, which congress were desirous to form, was, that the parties should respectively enjoy the rights of the most favored nations. Various answers were given by the foreign ministers, in behalf of their several nations. But the treaty with Prussia was the only one concluded, of the very great number proposed by the American commissioners. Mr. Adams, in 1785, was removed to London, Dr. Franklin soon after returned to America, and Mr. Jefferson succeeded him as minister at Paris. Thus failed the project of forming commercial treaties with almost every power in Europe. Treaties with Russia, Denmark, Great Britain, Spain and Portugal, would have been of importance; but the scheme of extending treaties of commerce to all the minor powers of Europe, not omitting his holiness the pope, was, it must be acknowledged, somewhat chimerical, and could not fail to have cast an air of ridicule on the commissions that with great solemnity were opened at Paris.

The imbecility of our national government, under the articles of confederation, was understood abroad as well as at home; and the opinions of characters in England, most inclined to favor an extensive commercial connexion between the two countries, were understood to have been opposed to the formation of a commercial treaty with us; since, from the defects of our articles of union, we were supposed to be destitute of the power requisite to enforce the execution of the stipulations that such a treaty might contain.

We must all remember the various and ill-digested laws for the regulation of commerce, which were adopted by the several states as substitutes for those commercial treaties, in the conclusion of which our commissioners had been disappointed—the embarrassments which proceeded from this source, joined to those felt from the derangement of the national treasury, were the immediate cause which assembled the convention at Philadelphia in 1787. The result of this convention was the adoption of the present federal constitution, the legislative and executive departments of which each possess a power to regulate foreign commerce; the former, by enacting laws for that purpose, the latter, by forming commercial treaties with foreign nations.

The opinion heretofore entertained by our government, respecting the utility of commercial treaties, is not equivocal;

and it is probable that they will, in future, deem it expedient to adjust their foreign trade by treaty, in preference to legislative provisions, as far as it shall be found practicable, on terms of reasonable advantage. In the formation of the regulations that are legislative, being *ex parte*, the interest of those who establish them is seen in its strongest light, while that of the other side is rarely allowed its just weight. Pride and passion too frequently add their influence to carry these regulations beyond the limits of moderation: restraints and exclusions, on one side, beget restraints and exclusions on the other, and these retaliatory laws lead to, and often terminate in, open war: While, on the other hand, by adjusting the commercial intercourse of nations by treaty, the pretensions of the parties are candidly examined, and the result of the discussion, it is fair to presume, as well from the experience of individuals in private affairs, as from that of nations in their more important and complicated relations, establishes those regulations which are best suited to the interests of the parties, and which alone afford that stability and confidence so essential to the success of commercial enterprise.

That our present government have thought a commercial treaty with Great Britain would be advantageous, is evident, not alone from the special and distinct commission given to Mr. Jay to form one; but likewise from the letter of Mr. Jefferson to Mr. Hammond, of the 29th November, 1791, which was the first letter to that minister after his arrival; in which the executive says: "with respect to the commerce of the two countries, we have supposed that we saw, in several instances, regulations on the part of your government, which, if reciprocally adopted, would materially injure the interests of *both nations*; on this subject too, I must beg the favor of you to say, whether you are authorized to conclude or to negotiate arrangements with us; which may fix the commerce between the two countries on principles of reciprocal advantage."

Further, from the first session of congress, to that during which Mr. Jay's appointment took place, efforts were made to discriminate, in our revenue and commercial laws, between those nations with whom we had, and those with whom we had not, commercial treaties.—The avowed object of which discrimination was, to place the latter nations on a less advantageous commercial footing than the former, in order to induce them likewise to form commercial treaties with us; and it cannot be forgotten by those, who affect to suppose that it was not expected that a treaty of commerce would be formed by

Mr. Jay, that Mr. *Madison's* commercial resolutions, which were under consideration at the time of Mr. Jay's appointment, grew out of, and were built upon, a clause of Mr. Jefferson's report of the 26th December, 1793, which asserts that Great Britain discovered no disposition to enter into a commercial treaty with us. The report alluded to is explicit in declaring a preference of friendly arrangements, by treaties of commerce, to regulations by the acts of our legislature, and authorizes the inference, under which the commercial resolutions were brought forward, that the latter should be resorted to, only when the former cannot be effected.

The power of the executive to form commercial treaties, and the objection against the commercial articles before us, as an unconstitutional interference with the legislative powers of congress, will, in the sequel, be distinctly examined, together with other objections on the point of constitutionality.

Against the policy of regulating commerce by treaty, rather than by acts of the legislature, it is said, that the legislative acts can, but that a treaty cannot, be repealed. This remark is true, and of weight against the formation of commercial treaties which are to be of long duration, or, like our commercial treaty with France, which is permanent. For, as we are yearly advancing in agriculture, manufactories, commerce, navigation, and strength, our treaties of commerce, especially such as, by particular stipulations, shall give to the parties other rights than those of the most favored nation, ought to be of short duration, that, like temporary laws, they may, at an early day, expire by their own limitation, leaving the interests of the parties to a new adjustment, founded on equity and mutual convenience.

Of this description are the commercial articles of the treaty with Great Britain; for none of them can continue in force more than twelve years; and they may all expire, if either party shall choose it, at the end of two years after the peace between France and Great Britain.

Did the limits assigned to this defence admit a review of the commercial and maritime codes of the principal European nations, we should discover one prevailing feature to characterize them all; we should see the general or common interest of nations, every where, placed in a subordinate rank, and their separate advantage adopted, as the end to be attained by their respective laws—Hence, one nation has enacted laws to protect their manufactures, another to encourage and extend their navigation, a third to monopolize some important branch of trade, and all have contributed to the creation of that compli-

cated system of regulations and restraints, which we see established throughout the commercial world.

One branch, and a principal one of this system, that which establishes the connexion between the several European nations and their colonies, merits our particular attention. An exact knowledge of this connexion would assist us in forming a just estimate of the difficulties that stand in opposition to our claim of free and full participation in the colony trade of Great Britain.

Unlike the plan of colonization adopted by the ancient governments, who, from the crowded population of their cities, sent forth and established beneath their auspices new and independent republics, the colonies of modern times have been planted with entirely different views; retained in a state of dependence on the parent country, their connexion has been made subservient to that spirit of monopoly, which has shown itself among all the commercial powers. Every European nation has its colonies, and for that reason prohibited all foreigners from trading to them.

Important political events arise and pass in such quick succession, that we are liable to forget facts and opinions familiar to us in periods within the ordinary powers of recollection.—No subject was more critically examined, or generally understood before the American revolution, than that which respected the connexion between Great Britain and her colonies! all were then agreed, that the colony trade and navigation were subject to the restraints and regulations of the parent state. It was not against this dependence and commercial monopoly that the colonies complained! They were willing to submit to them. It was the unjust attempt to tax them, to raise a revenue from them, without their consent, which combined that firm and spirited opposition, which effected a division of the empire—thus the congress of 1775, in their last address to the inhabitants of Great Britain, say, “We cheerfully consent to such acts of the British parliament as shall be restrained to the regulations of our external commerce, *for the purpose of securing the commercial advantages of the whole empire to the mother country*, and the commercial benefit of its respective members! excluding every idea of taxation internal or external for the purpose of raising a revenue on the subjects in America without their consent.” The “colonial codes of other nations are marked with the same spirit of monopoly:—thus Portugal shuts out all foreigners from the Brazils as well as from her Asiatic possessions, Spain from South America and her West India islands, France excludes all foreigners from her Asiatic dominions, and

limits within narrow bounds their intercourse with her colonies in the West Indies. Holland guards, with the miser's vigilance, the access to her spice islands, and imitates, though with somewhat less rigour, the policy of the other powers in her West India possessions.—And England, by her act of navigation, which has been in operation for more than a century, asserted, and hitherto has uniformly adhered to the like system of exclusion and monopoly.

Notwithstanding the intimate alliance, the family compact, between France and Spain, the former has not been able to procure admission into the Spanish colonial territories where she might have acquired immense wealth by the sale of her manufactures, her wines, and her brandies.—Holland, though a part of the Spanish monarchy long after the discovery of America, and the establishment of the Spanish power in that quarter of the world, was unable after her separation from Spain, and the acknowledgment of her independence, even in the zenith of her splendid power upon the ocean, to obtain by force or treaty a share in the Spanish colony trade to South America—The rival wars between the English and the Dutch towards the close of the last century, which originated in commercial competition and jealousy, were successively terminated without England yielding the smallest departure from the exclusive commercial system, contained in her act of navigation.

Great Britain, though maintaining her exclusive laws against other nations at different periods, has shown the strongest desire to share in the rich trade of Spain with her colonies—The war that commenced in 1739, was occasioned by the firm, but irregular, opposition of Spain to the contraband efforts of the British traders.

The impediments Great Britain has uniformly met in her attempts to extend her settlement in the Bay of Honduras, to form establishments at Falkland Island, and more recently at Nootka Sound, afford additional proofs of the fixed policy of Spain on the subject of her colony trade.

Portugal, whose political safety more than once has appeared to depend on the efficacious aid of Great Britain, does not yield to her ally any portion of her valuable colonial commerce.

So uniform and persevering has been the practice of nations on this point, that in the latest treaties of commerce between France and Spain, between each of these powers and Great Britain, between Great Britain, Sweden, Denmark, Holland, and Portugal, we do not discover, that any one of these powers, has consented to admit the others to a participation in the trade

and navigation to their respective colonies—the *Asiento* contract for the supply of negroes to the Spanish colonies, which has been made by Spain with several powers, is an unimportant and solitary exception to this rule.

Montesquieu calls this law appropriating the colony commerce to the benefit of the parent state, “A fundamental law of Europe.” “It has been established,” says this enlightened Frenchman,—“That the metropolis or mother country alone shall trade in the colonies, and that for very good reasons; because the design of the settlement, was the extension of commerce, not the foundation of a city or new empire. Thus it is still a fundamental law of Europe, that all commerce with a foreign colony shall be regarded as a mere monopoly, punishable by the laws of the country; and in this case we are not to be directed by the laws and precedents of the ancients, which are not at all applicable.”

“It is likewise acknowledged that a commerce established between the mother countries, does not include a permission to trade in the colonies; for these always continue in a state of prohibition.” [Montesquieu, *Liv. xxi. chap. xvii.*]

This subject is of too great importance not to be pursued a little further. Principles connected with it, and such as will continue to operate whether we sanction or condemn them, remain to be disclosed. It is true that the principal end of the dominion that the European powers have held over their colonies, has been the monopoly of their commerce, “since in their exclusive trade (as has been observed by a sensible writer on the subject) consists the principal advantages of colonies, which afford neither revenue nor force for the defence of the parent country;” but this is not the sole object. Some nations, and among them Great Britain, have viewed the exclusive navigation and trade to their colonies, in the light in which they have seen their coasting trade and fisheries; as a nursery for that body of seamen, whom they have considered not only as necessary to the prosperity and protection of commerce, but as essential to the defence and safety of the state.

The situation of Great Britain in this respect is peculiar: when compared with several of the neighbouring powers, her numbers and military forces are manifestly inferior. The armies kept on foot in peace, as well as those brought into the field in war, by the great nations in Europe, are so decidedly superior to those of Great Britain, that were she a continental power, her rivals would easily be an overmatch for her. The ocean is her fortification, and her seamen alone are the soldiers who can defend it. When Great Britain shall become an

inferior maritime power, when her enemy shall acquire a decisive superiority on the sea, what will prevent a repetition of those conquests the examples of which we find in her early history? No subject has been more profoundly thought on than this has been in Great Britain. Her policy, from the date of her navigation act, has been guided by these considerations—that her national safety depends on her wooden walls, is a maxim as sacred in Britain, as it once was in Athens. Her statesmen, her merchants, her manufacturers, and her yeomanry, comprehend and believe it.

Is it then surprising, that we see her so anxious to encourage and extend her navigation, as to exclude as far as practicable, foreigners from any share of her fisheries, her coasting, and her colony trade? Does not candour require us to admit, since her national defence rests upon her navy, which again depends on her seamen, which an extensive navigation can alone supply, that Great Britain having more to risk, is among the last powers likely to break in upon or materially to relinquish that system of exclusive colony trade, that has so long and uniformly prevailed among the great colonizing powers?

America has her opinions, perhaps prejudices, on the subject of commerce: she is, and, at least until she shall become a naval power, will continue to be, without colonies. But her laws manifest a similar spirit with those of other nations, in the regulations which they prescribe for the government of her fisheries and her coasting trade. The object of these laws is an exclusion of foreign competition, in order to encourage and increase her own navigation and seamen; from which resources, not only in wars between other nations, but likewise in those in which she may be engaged, important commercial and national advantages may be expected. These opinions deserve attention; they have already had and will continue to have a suitable influence with her government. But we should remember, that other nations have likewise their opinions and prejudices on these subjects; opinions and prejudices not the less strong or deeply rooted for having been transmitted to them through a series of past generations. Thus in England, not only the public opinion, but what is more unconquerable, the *private interests* of many individuals will oppose every change in the existing laws that may be supposed likely to diminish their navigation, to limit their trade, or in any measure to affect disadvantageously their established system of national commerce.

It cannot have escaped notice, that we have among us characters who are unwilling to see stated the impediments that stand in the way of the commercial arrangements, which they

contend, should be conceded to us by foreign nations, and who are ready to charge those who faithfully expose them, with an inclination to excuse or vindicate the unreasonable denials of our commercial rivals, and with a desire to yield up the just pretensions of our country. The artifice seems too gross to be dangerous with a sensible people, but the public should notwithstanding be on their guard against it.—They should dispassionately examine the real difficulties to be encountered in the formation of our commercial treaties. They should enquire and ascertain how far other nations, seeking the same advantages, have been able to succeed. They should further compare the treaty in question with those we have before made with other nations.—the result of such investigation so far from warranting the condemnation of the commercial articles of the treaty before us, it is believed would demonstrate that these articles make a wider breach in the British commercial system than has ever before been made; that on their commercial dispositions they are preferable to any treaty we have before concluded, and that there is rational ground to believe that the treaty will have a tendency friendly to the agriculture, the commerce, and the navigation of our country.

CAMILLUS.

 No. XXIV.

HOWEVER uniform may have been the law of Europe in relation to their colonial establishments, no pains have been spared to create an opinion that France has been guided by a more liberal policy than the other colonizing powers, and that the regulations of her colony trade were essentially dissimilar from theirs; moreover that her disinterestedness was so great, that she not long since proposed to our government to establish by treaty, a trade between us and her West India colonies equally free with that which prevails in her own intercourse with them. The object of these attempts is readily perceived.

As there was no probability, that Great Britain would consent to our trading with her West India colonies on the same terms as she herself does, as it was foreseen that limitations and conditions would accompany any agreement that should be made on this subject; to extol the liberty of France, and exclaim against the monopolizing views of Great Britain, were deemed suitable means to excite a prejudice against the expected adjust-

ment of the commercial intercourse between us and the British West India colonies.

A comparison of the footing by which our trade stood with the French and British West India colonies, after the completion of our revolution, and before the present war in Europe, with a concise exposition of the real views of France on the subject of a new commercial treaty, will best demonstrate the want of candor and patriotism in those Americans, who have submitted to become agents in propagating these errors.

France, like England, has endeavoured to secure the greatest possible portion of advantage to herself, by her colonial laws, and the concessions yielded to foreigners have been only such deviations from an entire monopoly, as her own interest has rendered indispensable—France, in imitation of the English navigation law, as early as 1727, established an ordinance, confirming to the mother country the monopoly of the trade to her colonies, and excluding thereby all foreigners—Experience proved the necessity of moderating the rigour of their ordinance, and relaxations in favor of a limited foreign intercourse existed at the time when our commercial treaty with France was concluded, by the thirtieth article of which, it is agreed, that France will continue to the citizens of the United States, the free ports, which have been and are open in their West India islands, to be enjoyed agreeable to the regulations which relate to them—A system of regulations relative to the trade of foreigners with the French islands, was promulgated in 1784: This ordinance established one free port at St. Lucie, another at Martinique, another at Gaudaloupe, another at Tobago, and three others at St. Domingo, to which foreign vessels of the burthen of sixty tons and upwards might carry for sale, woods of all sorts, pit coal, live animals, fatted beef, salted fish, rice, Indian corn, vegetables, green hides, peltry, turpentine, and tar—This was followed by the arrets of September, 1785, which by imposing heavy duties on foreign salted fish, and establishing large bounties on those of the national or French fishery, materially affected the foreign commerce with the French islands in this important article of supply and consumption.

Such were the duties on the foreign, and the premiums on the national fish, that together they would have been equivalent to a prohibition of the former, had the national fishery been able to supply the consumption.

In return for these articles which alone were permitted to be imported by foreigners into the French islands, and which it will be observed excluded some of our principal staples especi-

ally *flour*, they were allowed to purchase and bring away of the productions of the islands, only melasses and rum.

All cotton, coffee, sugar, and other productions (rum and melasses excepted) were prohibited; and we could, except occasionally by local relaxations of the general law, rightfully obtain none of them from the French West India islands—This was the footing of our trade under our treaty and the standing edict which preceded the French revolution, and even this was liable to still further limitations, whenever France should think proper to impose them; the treaty securing only a right to as free a commerce as France should grant to other foreign nations.

Great Britain has permitted the importation into her West India colonies of all the foreign articles, allowed by France to be imported into her islands (salted fish and salted beef excepted) and she moreover permitted the importation of foreign tobacco, flour, meal, biscuit, wheat, and various other grains which France prohibited—In return for these commodities, Great Britain permitted the exportation from her islands to our country, of rum and melasses, and moreover of sugar, coffee, cocoa, ginger, and pimento, together with such other articles as are allowed to be carried from their islands to any other foreign country.

Great Britain prohibited the importation and exportation of most of these articles to and from all foreign nations, except the United States—France permitted the intercourse with her colonies, under the same limitations to us in common with all other foreign nations.

The articles received from us by Great Britain, for the supply of her West India islands, exceeded in variety those received from us by France for the supply of her islands, the British West Indies were, therefore, in the ordinary and established course more extensive customers to us than the French West Indies. Again, the articles which we received from the British West Indies and which we were prohibited from receiving from the French West Indies, were among the most valuable of their productions, and, from the force of habit, some of them are included in the catalogue of articles of the first necessity in our consumption. In point of supply, therefore, the British were better furnishers, their colonial laws being much less restrictive than those of France.

Though the regulations of the British West India trade were more favorable to our agriculture than those of France, and though the articles with which we were supplied from the British islands were more numerous and valuable than those ob-

tained from the islands of France, the colony system of the latter was preferable to that of the former in relation to our navigation. France permitted our vessels of and above sixty tons burthen, to carry and bring away the articles, not prohibited in the foreign trade with her islands, while Great Britain confined the trade to her own vessels and excluded those of all foreign nations.

Difference of situation, and not of principle, produced this variety or distinction in the colony system of the two nations. France being able from her resources to supply most of the articles requisite for the consumption of her West Indies, and from her great population, having a proportionate demand for the productions of her islands, she has been carefully restrictive in the trade between her colonies and foreign countries as to the articles of import and export.

All the productions of her islands, must go to the mother country, except rum and melasses; these articles were not confined to France, because they would have directly interfered with the valuable manufacture of her brandies. On the other hand, Great Britain, being less able from her internal resources to supply the articles necessary for the consumption of her West Indies, and her population, or home demand not requiring the whole productions of her islands, she has been more liberal in the trade allowed to be carried on between her colonies and foreign countries as to the articles of import and export. But her navigation being adequate to the whole trade of all her dominions, while that of France required the addition of foreign bottoms, Great Britain has excluded entirely from her colony trade the foreign vessels of all nations, while France has admitted them to share in the foreign trade permitted to her West India islands.

Both France and Great Britain relax their colonial laws, in times of occasional scarcity and when they are engaged in war; during which, the intercourse with their West India possessions is laid more open to foreigners. The catalogue of supplies is sometimes enlarged, and Great Britain, as well as France, during these relaxations, permits American vessels to resort to, and engage in the commerce of, their islands.

It is notwithstanding from the permanent laws alone of these nations, that we are able to infer their views in relation to their colony trade! the exceptions and deviations that become necessary by reason of accidental scarcity or the embarrassments of war, serve only to explain more clearly the principles of the permanent system.

The result of this comparison affords no support for the assertion that France has been less exclusive, or more liberal in her colony system, than Great Britain—both these nations have in the establishment of their colonial laws alike disregarded the interests of foreign nations, and have been equally under the controul of the principles of self-interest, which ever have, and ever will govern the affairs of nations.*

Nothing can be more erroneous, than the opinion that any nation is likely to yield up its own interest, in order, gratuitously, to advance that of another. Yet we frequently hear declarations of this kind, and too many honest citizens have surrendered themselves to this delusion—Time and experience will cure us of this folly.

Equal artifice has been practised, and no less credulity displayed, on the subject of a new treaty of commerce, which it is boldly asserted, France from the most *disinterested* motives has offered to us. It should be recollected that France already has a treaty of commerce with us, a treaty that is not limited to two years, nor twelve years, but one that is to endure for ever—This treaty is as favorable to France as she can desire, or we in our utmost fondness be disposed to make—It secures to her our acquiescence in an exclusion from her Asiatic dominions, and in fresh regulations as her interest shall dictate relative to our intercourse with her West India possessions—It excludes us from her fisheries on the banks of Newfoundland, which she was unwilling to share with us, and it gives to her every commercial favor or privilege which by treaty we may yield to any other nation, freely when freely granted, and when otherwise on yielding the same equivalent—her productions, her manufactures, her merchandizes, and her ships may come into all our ports to which any other foreign productions, manufactures, merchandizes, or ships may come—they are severally to pay only the *lowest* duties paid by any other nation, and no other nation in its intercourse and trade with us, is, in any instance, to have a preference over her—A variety of other regulations are inserted in this treaty useful to France and not particularly disserviceable to us.

This treaty has been religiously observed and executed on our part; France has repeatedly violated it in the article which makes enemy goods free in neutral bottoms, while it is under-

* The opinion heretofore cited of *Montesquieu*, a Frenchman, agreeing with facts, is a positive testimony that the principle of the French system, like the English, is *monopoly*.

stood she has faithfully observed it in the article, that makes neutral goods lawful prize when found in enemy bottoms.

If it be true, that nations in justice to themselves are bound to decline the abandonment of their own interest, for the purpose of promoting at their own expense and detriment, the interest of others, ought we too readily to credit an opposite opinion? Ought we not to expect full proof of the sincerity of those declarations, that are intended to produce a belief of this disinterested and self-denying course? Ought not the very proposal of such a measure, from its extraordinary nature, inspire circumspection, and put a prudent nation on its guard? If moreover, the overture should occur at a moment when we are ascertained that those who make it, desire, and are, in fact, pursuing objects incompatible with the disinterestedness which it avows? If while it is said we wish that you should remain in peace with those who hold this language, neglect no means to engage our citizens to violate their neutral duties and thereby expose their country to war; if when we are told "we rejoice in the freedom of a sister republic," all the arts of intrigue, so much more dangerous by our unsuspicious temper, and unlimited affection for those who practise them, were employed to alienate our attachment from our own government, and to throw us into a state of anarchy; if when the fascinating proposal of opening new channels of commerce, which were to give unbounded riches to our merchants was received with more caution than was desired, we are told that in case of refusal, or evasion (mark the generosity) France would repeal her existing laws which had been dictated by an attachment to the Americans. What must have been our infatuation, what the measure of our folly, had we given implicit credit to words so much at variance with cotemporary actions? But it is asked, do not the letters of Mr. Genet to Mr. Jefferson, which have been published, prove that France desired and offered to enter into a new disinterested and liberal treaty of commerce with us? The question shall be fairly examined.

There are two letters from Mr. Genet on this subject—Immediately after his arrival at Philadelphia, in a letter to Mr. Jefferson of the 23d May, 1793, he says—"The French republic has given it in charge to me to propose to your government to consecrate by a true *family* compact, by a national covenant, the liberal and fraternal basis, on which it wishes to establish the commercial and political system of two people, whose interests are inseparably connected."

If the object of this proposal was a revision of our commercial treaty, in order to render the intercourse between us more

free and advantageous, this minister was singularly unfortunate in his expressions—He might have employed the fine phrase of consecrating by a true family compact, by a national covenant, the liberal and fraternal basis on which it was wished to establish the commercial system of the two countries, and have been intelligible; but when he tells us, that he is instructed to open a negotiation with our government, for the purpose of establishing the commercial and political system of the two countries, what are we to understand? That trade and its regulations are alone in view? Or that a family compact establishing the political, as well as the commercial system of the two nations, must include likewise the league or treaty of alliance, whereby the strength and wealth of the two nations should be closely united in the prosecution of a common object?

This ambiguous overture, if its meaning is not too plain to allow the epithet, was received in the most friendly manner by our government, and on the suggestion that the senate are united with the president in making treaties, it was understood between Mr. Jefferson and Mr. Genet, that the subject should be deferred till the meeting of congress.

Before that period, however, Mr. Genet, in a letter of the 30th of September, 1793, renews the proposal to open the negotiation relative to the proposed family compact between us and France; and proves to us that our benefit was its principal exclusive object, by affectionately intimating in the conclusion of his letter, that he is further instructed to tell us, in case of refusal or evasion on our part to enter into this family agreement, that France will repeal the laws dictated by the attachment of the French for the Americans.

Had it before been doubted whether political engagements relative to war, were intended to be connected with the proposed treaty, these doubts must have disappeared on the receipt of this second letter from Mr. Genet; the intimation that the laws of France which operated favorably to our trade with their dominions, would be repealed, in case we refused or evaded the conclusion of a new treaty, cannot be reconciled, with the belief, that this treaty was sought for from motives purely commercial, or solely to enlarge and add prosperity to our trade.

Mr. Genet at this time had so outraged our government as to have compelled them to request his recall, he must, therefore, have been convinced, that no conference would be held with him except on points of urgent importance, and such as would not admit of delay—He was, therefore, answered by Mr. Jefferson on the 5th of November, that his letter had been

laid before the president, and would be considered with all the respect and interest *that its objects* necessarily required; and in Mr. Jefferson's letter to Mr. Morris of the 23d of August, we are informed that our government were desirous to go into a commercial negotiation with France, and, therefore, requested that the powers given to Mr. Genet on that subject should be renewed to his successor—It has not appeared that this was ever done—His immediate successor, Mr. Fauchet, it is believed, gave no evidence of his having any powers relative to a commercial treaty; and if reports, which arrived with the present minister, having great marks of authenticity, may be credited, he has power only to *digest* the articles of such a treaty, not to *conclude* one.

Notwithstanding the internal evidence contained in the two letters of Mr. Genet was sufficient to have satisfied a sensible people, that something beyond a commercial treaty was connected with the proffered negotiation, and though this conjecture acquired strength from the cautious procedure of our government on the occasion: yet these letters, and that procedure, have been pressed upon the public as conclusive evidence, that France had offered, and our government refused, to enter into a new treaty of commerce, that would have been highly beneficial to our trade and navigation.

The refutation of this opinion so injurious to a reasonable and salutary confidence in the integrity and patriotism of our own executive government, and which the agents of its propagation, had spread far and wide, might have been more difficult, had not the minister of France for the purpose of justifying his own conduct, published his hitherto secret instructions.

By these instructions it appears, that the essential object of this proffered negotiation, was to engage the United States to make common cause with France in the war then foreseen, and which soon broke out with Spain and England—That the advantages to be yielded by a new commercial treaty were to be purchased by our uniting with France in *extending the empire of liberty, in breaking up the colonial and monopolizing-systems of all nations, and finally in the emancipation of the new world**—This was laying out a large and difficult work, in the accomplishment whereof arduous and numerous perils must be met, to encounter which we were called by no obligation to others, to avoid which we were admonished by all the duties which re-

* This mad scheme, the joining in which was to be the price of the proffered advantages, has since been renounced by France herself as a political chimera.

quire us to cherish and preserve our own unparalleled freedom, prosperity and happiness.

However contradictory this extraordinary project may appear to the friendly communications that had been made by the French government to ours, however repugnant to the soothing declarations pronounced by Mr. Genet, of the fraternal and generous sentiments of his country towards ours, and of the republican frankness and sincerity that should characterise his deportment;—let the following extracts from his instructions published by himself in December, 1793, be consulted in confirmation of this statement, and as an authentic exposition of the genuine views of the French executive council in the mission of Mr. Genet—viz.

“The executive council have examined the instructions given to the predecessors of the citizen Genet in America, and they have seen with *indignation*, that while the good people of America *have expressed to us their gratitude in the most lively manner, and given us every testimony of their friendship*, both Vergennes and Montmorin have thought that the *interests of France* required, that the United States *should not obtain that political order and consistency* of which they were capable, because they would thereby quickly attain a strength; which they might probably be inclined to abuse. These ministers, therefore, enjoined it upon the representatives of Louis XVI. in America, to hold a passive conduct, and to speak only of the personal vows of the king for the prosperity of the United States. The same machiavelism directed the operations of the war of independence, the same duplicity presided in the negotiations of the peace. The deputies of congress had expressed a desire that the cabinet of Versailles should favor the conquests of the Floridas, of Canada, of Nova Scotia: but Louis and his ministers constantly refused their countenance—regarding the possession of those countries by Spain and England, as useful sources of disquietude and anxiety to the Americans.”

After declaring that the executive council proposes to itself a different course, and that it approves of *the overtures*, which had been made as well by General Washington, as by Mr. Jefferson, to Mr. Ternant, relative to the means of renewing and consolidating the commercial regulations between the two countries, they proceed to declare further “that they are inclined to extend the *latitude of the proposed commercial treaty* (observe, the first proposal of a new commercial treaty came from us, and not from France) by converting it into a national compact, whereby the two people should *combine their commercial with their political interests*, and should establish an intimate concert

to befriend, under all circumstances, the extension of the empire of liberty, to guarantee the sovereignty of the people, and to punish the nations who shall continue to adhere to a colonial system, and an exclusive commerce, by declaring that the vessels of such nations should not be received into the ports of the two contracting parties. This agreement which the French people will support with all the energy that distinguishes them, and of which they have given so many proofs, will quickly contribute to the emancipation of the new world. However vast this project may appear, it will be easily accomplished, if the Americans will concur in it, and in order to convince them of this, no pains must be spared by the Citizen Genet. For independent of the benefits that humanity will draw from the success of this negotiation—France, at this moment, has a particular interest that requires us to be prepared to act with efficacy against England and Spain, if, as every circumstance announces, these powers, in hatred of our principles, shall make war upon us." In this state of things, we ought "to employ every means to re-animate the zeal of the Americans, who are also interested that we should disappoint the liberticide designs of George the third, of which they likewise may possibly be an object." "The executive council *has reason* to believe, that these reflections, *joined to the great commercial advantages*, which we are disposed to grant to the United States, will decide their government to agree to all that the Citizen Genet shall propose to them on our part—But as from the rumours respecting our interior, our finances, and our marine, the *American administration* may observe a wavering timid conduct! The executive council, in expectation that the American government will finally decide, to make common cause with us, charges the Citizen Genet to take such steps as shall be most likely to serve the cause of liberty and the freedom of the people."

In a supplemental instruction, the executive council say, "as soon as the negotiation concerning a new treaty of commerce shall be practicable, Citizen Genet must not omit to stipulate a positive reciprocity of the exemption from the American tonnage duty." The mutual naturalization of French and American citizens, so far as respects commerce, that has been proposed by Mr. Jefferson and approved by the executive council (this it is presumed, in the eyes of certain characters, would be free from objection, though the naturalization by treaty, of the subjects of any nation but France, would be treason against the constitution and against liberty) "will render this exemption from the tonnage duties less offensive to the powers who have a right by their treaties to claim the same exemption, for

the *casus fœderis* by this mutual naturalization will be entirely changed in respect to them—The reciprocal guarantee of the possessions, of the two nations, stipulated in the XIth article of the treaty of 1778, must form an essential clause in the new treaty to be concluded! The executive council, therefore, instructs Citizen Genet early to sound the American government on this point, and to make it an indispensable condition of a free trade to the French West Indies, so interesting for the United States to obtain. It concerns the peace and prosperity of the French nation, that a people whose resources and strength increase in a ratio incalculable, and who are placed so near to our rich colonies, should be held by explicit engagements to the preservation of these islands—There will be the less difficulty in making these propositions relished by the United States, as the great commerce which will be their price, will indemnify them before hand for the sacrifices they must make in the sequel—Besides, the Americans cannot be ignorant of the great disproportion between their means and those of the French republic! that for a long time the guarantee will be merely nominal for them, while it will be real on the side of France. And moreover that we shall, without delay, take measures to fulfil it on our part, by sending to the American posts, a force sufficient to shelter them from all insults and dangers, and to facilitate their intercourse with our islands and with France”—“and to the end that nothing may retard the conclusion of the negociations of Citizen Genet with the Americans, and that he may have in his hands all the means which may be employed in forwarding the success of his exertions to serve the cause of liberty, the council, in addition to the full powers hereunto annexed, has authorized the minister of marine to supply him with a number of blank letters of marque, to be delivered to such Frenchmen or Americans, as should equip privateers in America—the minister of war will likewise supply him with commissions in blank for the different grades in the army.”*

These were extraordinary means to enable the French minister to conclude with our government a pacific treaty of commerce. The above extracts, though not an entire translation of the whole of Mr. Genet's instructions, many parts of which are foreign to the point in discussion, are a faithful abstract of such parts of them, as relate to the principles and conduct of

* This measure countenances a conclusion, that it was the intent of the instructions, he should take the measures he did with regard to privateering and military expeditions from our territories, to force us into the war in spite of the “wavering and timid conduct of our administration.”

the French monarchy towards us, and are as explanatory of the views of the executive council on the subject of a new treaty of commerce—it will, I think, prove, if the assertions of that council are to be credited, that the gratitude, of which we have heard so much, ought not to be demanded on account of the principles that influenced the monarchy of France during our war, or subsequent to the peace—and furthermore it will prove that the real view of the French executive council in the mission of Mr. Genet, was to engage us by advantages to be conceded in a new commercial treaty, *to make common cause* with France, in the expected war with Great Britain and the coalesced powers. If then the established footing of our trade with the French West Indies, like that of our trade with the British islands, has been dictated by that colonial system of monopoly, which forms a fundamental law in Europe—and if moreover the opinion that we could have procured a new and more liberal treaty of commerce with France, without plunging our country in the present war, is an error, that has been artfully imposed on the public—by exposing these truths, the examination of the treaty with Great Britain is at once freed from the objections and aspersions that have proceeded from these errors.

CAMILIUS.

 No. XXV.

IT will be useful, as it will simplify the examination of the commercial articles of the treaty, to bear in mind and preserve the division, that we find established by the 12th, 13th, and the 14th and 15th articles; each respects a particular branch or portion of the trade between the two countries, the regulations whereof differ from, and are severally independent of, each other—Thus one is relative to the West Indies—another to the East Indies—and the third, distinct from both the former, respects our trade with the British dominions in Europe.

That Great Britain will consent to place our trade with her West India colonies upon an equally advantageous footing with her own, is improbable; this would be doing what none of the great colonizing nations has done, or is likely to do—it would be to relinquish the principal ends of the establishment, and defence of her colonies; it would be equivalent to making her islands in the West Indies the common property of Great Bri-

tain and America for all commercial and profitable purposes; and exclusively her own in the burden of support and defence.

The senate have, however, and, I think, wisely, considered the terms and conditions, on which it is agreed by the 12th article, that we should participate in the trade of the British West Indies, as less liberal than we may, with reason, expect—The exclusion of all vessels above the burden of seventy tons, would diminish the benefits and value of this trade; and though we cannot calculate upon obtaining by future negotiation a total removal of a limitation on this subject, it is not altogether improbable that a tonnage something larger may be procured.

Those who are conversant with our present intercourse with the West Indies can best determine whether many vessels under seventy tons burden are not, at this time, profitably employed in that trade: it is believed to be true, that previous to our independence, vessels of this burden were much engaged in that employ as well in the southern as in the eastern states.

This limitation, though disadvantageous, is not the strongest objection to the 12th article: the restraining or regulating of a portion of our trade, which does not proceed from, and is independent of the treaty, forms a more decisive reason against the article than any thing else that it contains.

The cause of this restraint is found in the commercial jealousy and spirit of monopoly, which have so long reigned over the trade of the colonies—Under our treaty with France and the French colonial laws, it has been shown that we could not procure from the French islands sugar, coffee, cocoa, cotton, or any of the other productions, melasses and rum excepted.—Great Britain has seen it to be compatible with her interest to admit us to share more extensively in the productions of her islands; but she has desired to place limitations on this intercourse. To have left it entirely open and free, would have been to have enabled us not only to supply ourselves by means of our own navigation, but to have made it an instrument of the supply of other nations with her West India productions.

When we reflect upon the established maxims of the colony system, and moreover when we consider, that an entire freedom of trade with the British West Indies might, at times, materially raise the price of West India productions on the British consumers, the supply of whom is essentially a monopoly in the hands of the British planters, we shall be the less inclined to believe that Great Britain will yield an unrestrained commerce with her West India possessions to any nation whatever.

But if this was the object of the restraint, it may be asked, why it was not confined to such enumerated articles as were of the growth or production of her own islands, instead of being so extended as to comprehend all melasses, sugar, coffee, cocoa, and cotton, including even the cotton of the growth of our own country? It is very possible that the circumstances of our native cotton's becoming an article of export to foreign markets might not have occurred to our negociator—This would be the less extraordinary, as heretofore it has not been cultivated, except in a very limited degree, and as an article of export rather in the manner of experiment than otherwise; and, as moreover, from the expense and difficulty of separating the seeds from the cotton, we have been hardly able hitherto to class cotton among our exports. Its cultivation is said latterly to have become an object of attention, in Georgia and South Carolina—still however it cannot yet be considered as a staple commodity—But from the recent ingenious and simple machine for spinning cotton, it is hoped that the cultivation may be extended, so that not only our own domestic manufactures may be relieved from a dependence on foreign supply, but the catalogue of our valuable exports enriched by the addition of this inestimable production.

In answer to the question that has been stated: it may be further observed, that these enumerated articles, though the productions of different territories, being so much alike as not easily to be distinguished, it is probable that the difficulty in discriminating the productions of the British islands from those of a different growth, was supposed to be so great, that an apprehension was entertained that the prohibition to re-export the former would be easily evaded and illusory, while the latter remained free.

This apprehension, however, it is believed, was carried too far; as, on a minute examination of the subject it will be found, that our laws relative to drawback, with a few analogous provisions in addition, can be made sufficiently to discriminate and identify on re-exportation, all such articles of the growth of the British islands, as may be within our country, and that they will afford the same security for a faithful and exact execution of the prohibition to re-export such articles as that on which our own government relies against frauds upon the revenue. The application of these laws, with the requisite additions and functions, may be secured by a precise stipulation for that purpose in the treaty, in such manner as would afford an adequate guard against material evasions.

But though the conduct of the senate in withholding their assent to this article, is conceived, upon the whole, to be well judged and wise, yet there were not wanting reasons of real weight to induce our negociator to agree to it as it stands.

The inviolability of the principles of the navigation act had become a kind of axiom, incorporated in the habits of thinking of the British government and nation. Precedent, it is known, has great influence, as well upon the councils as upon the popular opinions of nations!—and there is, perhaps, no country in which it has greater force than that of Great Britain—The precedent of a serious and unequivocal innovation upon the system of the navigation act, dissolved as it were the spell by which the public prejudices had been chained to it. It took away a mighty argument derived from the past inflexibility of the system, and laid the foundation for greater inroads upon opinion, for further and greater innovations in practice. It served to strip the question of every thing that was artificial and to bring it to the simple test of real national interest, to be decided by that best of all arbiters, experience.

It may, upon this ground, be strongly argued that the precedent of the privilege gained was of more importance than its immediate extent—an argument certainly of real weight, and which is sufficient to incline candid men to view the motives that governed our negociator in this particular, with favor, and the opinion to which he yielded with respect. It is perhaps not unimportant by way of precedent, that the article, though not established, is found in the treaty.

Though the 12th article, so far as respects the terms and conditions of the trade to the British islands, forms no part of the treaty, having been excepted, and made the subject of further negotiation, it may nevertheless be useful to take notice of some of the many ill-founded objections that have been made against it: of this character, is that which asserts, that the catalogue of articles, permitted to be carried by us to the British islands, may be abridged at the pleasure of Great Britain, and so the trade may be annihilated.

The article stipulates that we may carry to any of his majesty's islands and ports in the West Indies, from the United States, in American vessels, not exceeding seventy tons, any goods or merchandizes "being of the growth, manufacture or production of the said states, *which it is or may be* lawful to carry to the said islands, from the said states, in British vessels;" not all such articles as it is and may be lawful to carry, but in the disjunctive, all such as it is or may be lawful to carry; in other words, all such articles as it is now lawful to carry,

together with such others as hereafter it may be lawful to carry; the catalogue may be enlarged, but cannot be diminished. It may also be remarked incidentally, that this objection sounds ill in the mouths of those who maintain the essentiality of the supplies of this country, under all possible circumstances, to the British West Indies; for if this position be true, there never can be reasonable ground of apprehension of too little latitude in the exportation in British vessels, which is to be the standard for the exportation in ours.

This article has been further criticised on account of the adjustment of the import and tonnage duties payable in this trade, and it has been attempted to be shown that the footing on which we were to share in the same would, on this account, be disadvantageous, and the competition unequal. What is the adjustment? The article proposes that British vessels employed in this trade shall pay, on entering our ports, the alien tonnage duty payable by all foreign vessels, which is now fifty-cents per ton; further, the cargoes imported in British bottoms from the British West Indies, shall pay in our ports the same impost or duties, that shall be payable on the like articles imported in American bottoms; and on the other side, that cargoes imported into the British islands, in American bottoms, shall pay the same impost or duties that shall be payable on the like articles imported in British bottoms—that is to say, the cargoes of each shall pay in the ports of the other only native duties, it being understood that those imposed in the British West Indies, on our productions, are small and unimportant, while those imposed in our ports, on the productions of the West Indies, are high, and important to our revenue.—The vessels of each shall pay in the ports of the other an equal alien tonnage duty, and our standard is adopted as the common rule.

Is not this equal? can we expect or ask British vessels should pay an alien tonnage duty in our ports, and that American vessels should enter their ports freely, or on payment only of native tonnage duties? can we in equity require them to pay, on the importation of their cargoes in British vessels, an addition of ten per cent. on the duties payable on the importation of the like articles in American vessels, and at the same time demand to pay no higher or other duties on the cargoes carried in our vessels to the British islands, than those payable by them on the like articles imported in British vessels? the very stating of the question suggests to a candid mind an answer, that demonstrates the injustice of the objection. To expect more, were to expect that in a trade in which the opinions and practice of Europe contemplate every privilege granted for a foreign

nation as a *favor*—we were by treaty to secure a greater advantage to ourselves than would be enjoyed by the nation which granted the privilege.

But it is added, that our laws impose a tonnage duty of six cents per ton on the entry of American vessels engaged in foreign trade, and it is not known that British vessels pay any tonnage duty on their entry in their ports in the West Indies—and so uniting the two entries, that is, the entry in the West Indies, and the entry on a return to our ports, an American vessel will pay fifty-six cents per ton, when the British vessels will pay only fifty cents per ton—If the British government impose no tonnage duty on their own vessels, and we do impose a tonnage duty on ours, this certainly cannot form an objection against them. They are as free to refrain from the imposition of a tonnage duty on their own ships, as we are to impose one on ours—If their policy is wiser than ours in this respect, we are at liberty to adopt it, by repealing the tonnage duty levied on American navigation, which, if we please, may be confined to the particular case; the effect of such a measure as far as it should extend, though the duty is small, would be to add a proportionable advantage to our shipping in foreign competition. But the object of the articles in this particular is to equalize, not the duties that each may choose to impose on their own vessels, but those that they shall impose on the vessels of each other: and in this respect the article is perfectly equal—It is perhaps the first time that the objection of inequality was founded on a circumstance depending on the laws of the party affected by it, and removeable at his own option.

This view of the subject authorizes a belief, that, in the revision of the article, a modification of it may be agreed to that will prove satisfactory. Indeed, from the short duration of the article, taken in connexion with the expressions made use of towards the close of it, relative to the renewal of the negotiation, for the purpose of such further arrangements as shall conduce to the mutual advantage and *extension* of this branch of commerce, we may infer that Great Britain contemplates a more enlarged and equal adjustment on this point.

The relaxations which now exist in the colonial systems, in consequence of the necessities of war, and which will change to our disadvantage with the return of peace, have been considered by some as the permanent state of things. And this error has had its influence in misleading the public in respect to the terms and conditions on which we may reasonably expect to participate in trade to the West Indies—But let it be remembered, that the restoration of peace will bring with it a restor-

ation of the laws of limitation and exclusion, which constitute the colonial system. Our efforts therefore should be directed to such adjustment with Great Britain on this point, as will secure to us a right after the return of peace, to the greatest attainable portion of the trade to her islands in the West Indies.

It has been alleged, should the expected modification of this article retain its present stipulation on the subject of import and tonnage duty, that as France by treaty may claim to enjoy the rights and privileges of the most favored nation, she would demand an exemption from the ten per cent. on the duties upon the productions of the West Indies imported in foreign bottoms, and would moreover be free to impose an alien tonnage on our vessels entering her ports in the West Indies, equal to that imposed on her vessels in our ports. This is true—But in order to make this demand, France must agree, *by treaty*, to open all her ports in the West Indies, to give us a right to import into them, flour, bread, tobacco, and such other articles as Great Britain should permit, and which France by her permanent system prohibits; she must also concede to us a right to purchase in her islands, and bring away, sugar, coffee, and pimento, which by the same system she also prohibits; she must do all this, because, by our treaty with her, she can only entitle herself to a special privilege granted to another nation, by granting on her part to us the equivalent of what was the consideration of our grant. Should France be inclined to arrange the trade between us and her islands, we certainly shall not object; because, besides the right to such an arrangement, it would be more advantageous to us than that which now regulates our intercourse with her West Indies.

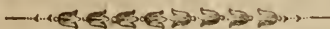
So much of the twelfth article as respects its duration and the renewal of the negotiation previous to the expiration of two years after the conclusion of the war, in order to agree in a new arrangement on the subject of the West India trade, as well as for the purpose of endeavouring to agree whether in any, and in what cases, neutral vessels shall protect enemy's property, and in what cases provisions, and other articles not generally contraband, may become such, form a part of the treaty as ratified by the president. These clauses sufficiently explain themselves, and require no comment in this place. They, however, prove one point, which is, that after every effort on the part of our negociator, the parties were not able to agree in the doctrine that free bottoms should make free goods, nor in the cases in which alone provisions and other articles not generally contraband, should be deemed such. Leaving, therefore,

both these points precisely as they found them (except in respect to provisions, the payment for which, when by the law of nations liable to capture as contraband, is secured) to be regulated by the existing law of nations, it is stipulated to renew the negotiation on these points at the epoch assigned for the future adjustment of the West India trade, in order then to endeavour to agree in a conventional rule, which, instead of the law of nations, should thereafter regulate the conduct of the parties in these respects.

The eleventh article has been passed over in silence as being merely introductory and formal.

CAMILLUS.

[TO BE CONTINUED.]



Observations on Mr. Jay's Treaty.

[CONCLUDED FROM VOL. 2. PAGE 13.]

No. XVI.

THE 9th article stipulates that such British subjects as now hold lands in the territory of the United States, shall continue to hold them according to the *tenure and nature of their* respective estates, and may sell, grant or devise them as if they were natives, and renders this stipulation mutual. Though this article may not be extensively dangerous, yet it merits our attention, as it appears to infringe the constitutional independence of the respective states.—Congress alone have the power to naturalize; but neither congress, nor any member of the federal government, appear to me to have any right to declare the tenure by which lands shall be holden in the territories of the individual states, without naturalization. This is an act of sovereignty which is confined to the state legislatures, and which they have not ceded to congress, about which, therefore, I am led to doubt the right of the president and senate to treat.—“Powers not delegated to the United States, being expressly reserved to the States or the people thereof.”—Is this right of the states abridged by the power of the president and senate to make treaties? Are not their powers to treat confined to such objects as the constitution entrusts to the federal go-

vernment? Had they stipulated that the governor of New York should always be a native of Britain, or that British subjects should, on their arrival, be members of the city corporation or freemen of the city; we should, I believe, have pronounced this article void, as an intrusion upon the rights of the state, and an assumption of powers not vested in the parties treating. Is it less so to declare the terms on which individuals shall hold lands in the territories of the respective states—to give rights to strangers which citizens cannot enjoy, the rights of land-holders without the burdens—the right of holding real property without being bound to defend it—the right to be protected in the possession of that property by states to whom they owe no allegiance, and against whom they may even make war without incurring a forfeiture?

Happy British subjects! As merchants you may enjoy in every part of our country, all the privileges of our fellow citizens.—As creditors, you are entitled to recover your debts, without being compelled to submit to the forms of suits, or the usual rules of evidence.—As officers, you are to command our respectful homage.—As land-holders, you are to possess our lands in peace, while the burden of defending them devolves on us, your former equals, your present vassals.—The produce of our soil is to be diverted from every other port but yours.—Our seamen are to fight your battles, but to be treated as pirates if they appear in arms against you.—Our statesmen condescend to be your apologists, and our legislatures are bound in future to do no act which may affect your interests! While congress only are entrusted with the power of declaring the rules of naturalization, lest one state by making the terms too easy, should intrude citizens upon others, can it be constitutional for the president and senate to exercise the more dangerous power of investing the lands of the respective states in foreigners who shall not be compelled to defend them? If the right exists as to British subjects who *now* hold lands, it may be extended, on some future occasion, to all who may hereafter choose to purchase. It is true the article does not go that length; but the principle, that justifies it, as far as it has gone, will apply equally to every extension of it. It may not be improper to remind those who view this article with indifference, of the quantity of land held in Georgia, by companies whose avowed object is to sell it in Europe. If I am rightly informed, it greatly exceeds all the land retained by the state. In New York, the lands commonly called Morris's, M'Comb's, and Scriba's purchases, equal in quantity all the remaining lands of the state. They have had agents for some time past in England

for sale of these lands. If it was effected before the ratification, or at least before the signature of the treaty, as much land may be held in this state by British subjects as by American citizens. If they were held in trust, which is highly probable, the person in whose favor the trust was created, is now secured from forfeiture, since they are to hold "according to the nature and tenure of their respective estates and titles," &c. The British construction of this article will give them the full benefit of their purchases; it may then happen, even under the present treaty, as it now stands, that the greater part of the lands of the two states, at least, belong to British subjects, who may look to their own sovereign for protection, even against the state whose lands they hold. What dangers and difficulties may not this expose the states to? If it is admitted that the president and senate can by treaty stipulate without the consent of a state, that their lands may be held by British subjects, what principle is there in the constitution which prevents their making the same stipulation, in favor of the British king, or their transferring all the vacant lands in every state to him? These were formerly invested in him, and I doubt not that if he were to set up a claim under this article, that he would find advocates among us to support it. Let it be remembered that the exercise of these powers by the president and senate is only derived from an *implication* founded on their right to make treaties. I would ask, whether a stronger implication in favor of an exclusive right in the state governments to make regulations relative to this object, is not found in the third section, fourth article of the constitution—"Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory, or other property of the United States; and nothing in this constitution shall be so construed as to prejudice *any claims* of the United States, or of *any particular states*." The claim of states to declare the tenure, on which their lands shall be held, has never been disputed; and so jealous have some of them been of it, that they have repeatedly refused to admit foreigners to hold lands without naturalization.

Several articles, which appear to me exceptionable, remain to be discussed; but, circumstances, arising from the present unhappy situation of the city, compel me to lay aside my pen. When these circumstances cease to operate, I may again resume it. I trust, however, that enough has been said to show, that the treaty has obtained no adequate compensation for the injuries we have suffered. That it has relinquished important claims that we had upon the British government. That it has given no protection to our seamen. That it is injurious to our commerce,

and ruinous to our navigation. That it takes from us the means we possessed of retaliating injuries without the hazard of a war. That it pledges the country for immense sums of money, which it does not owe, while it curtails our demands upon Britain. That it gives the British subjects a variety of privileges in our country, which are but partially returned to us. That it counteracts the existing laws, and violates the federal constitution, and that it infringes the rights of individual states. It is possible, that in stating my idea of the treaty, I may have run into errors; all I can say, is, that if I have, none of them were intentional; that having no party to serve, no personal interest to promote, I have only spoken sentiments, which an ardent love for a country, which I have long served, has inspired, without wishing to mislead. I beg my fellow citizens to recollect, that if the treaty will bear the construction I have given it, though an ingenious commentator may put a different sense upon several articles; that still the objections I state will remain in force, since it is not the *weakest*, but the *strongest* nation that construes the articles that admit of doubts, of which we have a striking instance in this very treaty.—In the treaty of peace, the words of the article relative to the taking away negroes, &c. are express, the intention was acknowledged at the time by the commissioners on both sides, and not doubted by either government; yet we find that Camillus has, by implications, &c. given it a meaning, which he says renders it *doubtful*; he justifies Mr. Jay in relinquishing our claim.—If this is just reasoning in the mouth of an American writer, it will still be more so in that of Britain; and the most unfavorable construction of the treaty, will be the true one with respect to us; because every doubt is to be construed against us. This argument is rendered much stronger from the circumstances under which Mr. Jay treated; for if when they were more unfavorable to Britain, than we can again hope to find them, doubtful constructions were to be construed to her advantage, by the admission of *our* envoy, they must, in future, be so. Let us not then form our opinions of the treaty from distant *implications*, or remote deductions, drawn from fanciful reasonings on the laws of nations.

The express words of the treaty are our only true guide. Where they contain unfavorable stipulations, or where they neglect explicitly to declare our rights, their plain and obvious meaning is to enforce the first, and to abridge the last. Of this we have already sufficient proof in the construction they have put on some parts of the treaty by their late instructions. I should, before I close, apologize for many errors, either of the

copyist or the press, or both. It has so happened, that most of the copies were made under such circumstances as not to have been submitted to my inspection, which, together with the errors of the press, multiplied by the different impressions it has gone through, have introduced many mistakes, which the candid reader will correct. It is also proper that I should mention an error of my own in the seventh number, which has not been noticed: but which, as I have no wish to mislead, I am bound to correct. In enumerating the impositions of Britain, I stated, that she laid heavy duties on our commodities, rice and tobacco particularly, and added, *that we laid none upon her, but such as by treaty we allowed her to equalize*—The last part of this article is an error, which the hasty manner in which these papers have been written, betrayed me into, and which I take these means to acknowledge, lest (though of no great importance) it might tend to deceive those who had not at hand the proper means of correcting the mistake.

C A T O.



A T T I C U S—No. VI.

[CONTINUED FROM VOL. 2. PAGE 228.]

THE hero of the funding and excise systems, the parent of that immaculate axiom, which would do honor to Constantinople, that *a public debt is a public blessing*, has entered the lists as the champion of his darling brat, The Treaty. He is brandishing his usual weapons, sophistry and seduction, but not with his accustomed success; for since his character has been fully understood, he has become as harmless, as to his influence upon *the people*, as a toad or a cock-roach; and, like those animals, he excites sensations which are those of aversion more than of dread. Divested of that instrumentality which he employed but too successfully against his country, the circle of his corruptions must be narrowed, and the whips and stings of an accusing conscience must now be substituted for the supreme agency in the affairs of the United States.—The political heresies which he laboured to establish, with all the zeal of a fanatic, have unfortunately acquired an influence where they may still prove dangerous, and the unlimited ascendancy that he seems yet to maintain over minds, which

ought to be free from such slavish shackles, shadows the prospects that are opening to the American world.

He has again raised the war whoop, and expects, by his hideous yells, to terrify you, fellow citizens, into an abandonment of your rights, a prostitution of the first blessings of a free people. Have the funding and excise systems paralyzed your energies, that, like children, you are to be terrified by scare crows? No! For whatever calculations he may have made in this respect, *his* public blessings have not yet transformed you into the eunuchs of liberty, and as you were not to be intimidated by the roaring of the British lion during the revolution, you cannot be alarmed at the brayings of an animal, who has only covered himself with his skin.

The war-whoop of "*Camillus*" begat the negotiation, and benumbed the faculties of our country; and he expects, by the magic of his yelpings, to give life to an abortion, that, like the fabled Basilisk, would look liberty to death. If the threat of war is to produce a renunciation of our rights as a nation, and of our freedom as a people, we had better divest ourselves of the trouble of our independence, and place ourselves formally under the guardianship of a foreign power!—Did the cry of war terrify us into a compliance with the dictum of Great Britain, to bind us in all cases whatever? Did it make us swallow the tea, which, like the treaty, was to have palsied us into slavery? Did it make us cringe to his Britannic majesty, and "lick the hand, just raised to shed our blood?" Were our energies greater at the commencement of the late revolution, than they are now! Or have we become more corrupt? This is the rub, fellow citizens—the instrumentality of a *funding system*, aided by *British influence* and directed by another Walpole, had not then enervated us. We were strangers to corruption, and principle incited us to the maintenance of our rights. Is the question war or slavery? War is the alternative annexed to a rejection of the treaty by *Camillus*, and slavery the alternative of its acceptance, in the mind of every well-wisher to his country. If war or slavery is then the question, rather let the temple of Janus be for ever open, than that liberty should be made a peace offering to a British tyrant. But will that sovereign, upon "whose goodness and justice," we have placed such reliance, let loose the dogs of war, if the "detestable faction," the people, refuse his friendship, as expressed by the treaty? Should they be hardened, will not *twenty* righteous be found, *twenty* who are uncontaminated with republicanism, to save Sodom? Stern, indeed, must be that justice, inflexible

that goodness, which would not save a sinking land on account of a few righteous, that might be found within it!!

No! No! “Camillus”—your “*great, good, and dear friend*,” is too much occupied with his neighbours on the other side the channel, to find time to attend to us—Like the bear who was surrounded by hornets, he is too busy to be attracted by anything at a distance. The plethora of his body politic has been too much reduced by the French bayonet, to be in vigor to attack men who once treated him so roughly. We fear him not—we want no *proxies* to fight our battles; and if *your* nerves are too weak, or your reverence for majesty too great, cease your attempts to communicate your weaknesses to the athletic freemen of America. Confine your seductions to your present circle; for by keeping them within those limits, you may escape, for a time, the contempt and detestation which menace you.

But if war is such a dreadful calamity, so much to be deprecated, that the phantoms of it alone unstring the cob-web nerves of “Camillus,” what will be our condition, when the grisly monster Mars, arrayed in all his terrors, rushes to revenge the injuries and perfidies done to the French republic? Does he suppose, that war can become an evil only when waged against his idol, Great Britain? Would the part which we should take in the league of despots, should the treaty obtain, soften the horrors or mitigate the distresses of war? Would a war with the French republic prop a *funding system*, that he seems so careless about it? Should his bastard be legitimized, there can be little doubt, that France would consider it as an infraction of our neutrality, as a supercession of our engagements with her, and as a virtual, though not formal, accession to the confederacy of tyrants against her. Circumstances, my fellow citizens, will justify the suspicion, that a war with the French republic would be considered as a thing devoutly to be wished by Camillus and his friends, and that the treaty was formed with a solicitude for that event. There seems to have been a deliberate plan to exterminate liberty, and this was to have been effected by throwing off the connexion with France, and consolidating ourselves with Great Britain.—In the arms of despotism, liberty would have been suffocated; and in the arms of a British tyrant her fate would have been inevitable.

The increase of affection for France, in the breasts of the American citizens, *since she became a republic*, seems to have produced a serious alarm among the *Aristocratic faction* of the United States; and hence the repugnance to treat with her

anew—hence the Machiavelian construction of every thing which was due to her—and hence the solicitude to form the unnatural alliance that has manifested itself in the treaty. That the government of the United States has been making rapid strides towards aristocracy, no unprejudiced man, at this time of day, will deny; and that a connexion with Great Britain was sought for, to facilitate this object, no one, who has noticed the steps of our administration, and has read the treaty, unbiassed by party spirit, will controvert. If there was not an *extraordinary* predilection for Great Britain, would the United States have been passive under the many outrages they have sustained—would they have suffered, in silence, their seamen to be impressed, like slaves, on board British ships of war, and would they have beheld the unparalleled insult, without emotion, that has been offered to our nation, in the attempt to seize a minister of France, within the limits of our own territory!! Heaven, earth, and hell, would have been conjured, if an attempt of the sort had been made upon the minister of Great Britain: and yet those fiends are by treaty “to be treated with that respect which is due to the commissions which they bear; and if any insult should be offered to them, by any of the inhabitants, all offenders, in this respect, shall be punished as disturbers of the peace and amity between the two countries”!!

Fellow citizens, I have digressed from the treaty; but you will think it excusable, as you know the cause; for the man who can behold the bare-faced attempts upon our rights, and the audacious outrages upon our country, without the strongest emotions, is unworthy of the freedom and inheritance of the revolution.

ATTICUS.

August 8th, 1795.

No. VII.

A SOLEMN, an awful silence pervades the world of American politics, portentive of some great event. The signature, the unexpected signature of the president to the treaty, has momentarily paralyzed the American mind, as if by *etherial impulse*; and it has not yet recovered from the incubus of astonishment and grief, with which it was oppressed. The omnipotence of truth will, however, at last prevail; and though the Americans are grateful, they are just; and that

sense of justice will prevent a barter of their own rights and their own happiness for the gratification of any individual, however high his *own* claim to an unlimited contrul over his country. The conflict of jarring feelings, the strife between gratitude and self-love, has, for a moment, suspended the voice of injured freemen; but the feeble mound of gratitude will not long resist the impetuous and imperious cataract of self-preservation.—Gratitude! What means it when in contact with political justice! What means it, when thrown in the opposite balance of our happiness! Does an individual claim more feeling than ourselves, our families, our country! Does he demand sentiments in hostility to our own repose! Human nature must undergo a revolution before this can come to pass, and virtue yield its throne to vice.

The services of the president, during the revolution, are decked in all their charms, to seduce us from a question of his present motives. He is held up to us as the high priest of liberty, to give absolution to our own sensations. The amiable virtue, gratitude, is appealed to in our bosoms, to neutralize our indignation, at his having signed the treaty, *after the general sentiments of his country had been made known to him, in opposition to it.* Had his signature been given immediately after the adjournment of the senate, and before an universal expression of disapprobation of it had taken place, ingenuity might have found a cover for him; but the public mind seems to have been designedly wrought up to the highest key of expectation, that the contempt of it might be more strongly disclosed. Is gratitude to put a seal upon our lips under such circumstances? Are freemen to be treated with the most marked contumely, and to be passive under it like slaves? Is the president to receive more reverence than our constitution, and more devotion than liberty! Let us be consistent, and either renounce our constitution, and our pretensions to freedom, or rally round them in contradiction to the will of an individual. I will endeavour to prove to you, my fellow citizens, in the course of these letters, that our constitution has been totally disregarded, and that the president has substituted his will, for the will of the people—that he has thwarted the affections of the people, and in contempt of their attachment to the republic of France, and aversion from Great Britain, has deceived the one, and crouched to the other. If gratitude is due to the president, has not France likewise a claim to it? Shall *he* prove ungrateful to her, and *we* prove grateful to him? Shall he practice deception upon the best friend of our country, a friend to whose generous aid he owes his present greatness,—and shall we prove perfidious

enough to give it our countenance? Shall he take Great Britain into his bosom, Great Britain who fought to enslave us, who has been guilty of every baseness and every outrage against us, and shall we be obliged to smile upon the monster, and receive the kiss of Judas? Shall he greet the tyrant George, as his "*great, good, and dear friend*;" and shall we be obliged to recognize such sacrilege of liberty? Shall he colonize us anew, and shall we be obliged to subscribe the shameful compact? Shall that independence, which he assisted to establish, be prostrated by him at the feet of Great Britain—shall that constitution, the sacred bond of union and dear bought inheritance of the revolution, be trampled under foot by him, and gratitude still be chaunted in our ears? Was the revolution designed to make him a monarch, and a few speculators noblemen! Is this the gratitude that is demanded? Are we to establish a political infallibility, and consecrate a political pope in our country? Is it longer to continue impious to arraign presidential measures? If so, I will preach up a reformation, and dare to be a Luther in politics.—I will strive to unmask the idol we have set up, and show him to be a man—and a man too, not fashioned according to the model of liberty. In signing the treaty, the president has thrown the gauntlet; and shame on the coward heart, that refuses to take it up. He has declared war against the people, by treating their opinions with contempt—he has forfeited his claim to their confidence, by acting in opposition to their will,—and shall we not dare to speak our injuries, and proclaim our wrongs!

Fellow citizens, we are on the eve of some great event—our liberties are in jeopardy, and we must either rescue them from the precipice, or they will be lost to us for ever. One hope offers itself to us, and a consolatory one too, *the house of representatives of the United States*. As we have looked in vain for patriotism from the president, let us turn our eyes towards that body—they are our *immediate* representatives—they feel our wants, participate in our injuries, and sympathize in our distresses. They never will submit to having our country degraded—they never will be passive under the outrages upon our constitution—they never will be the instruments of voting away their own and the people's rights. As our application to the president has been treated with scorn, let us make our appeal to that body, which has the power of impeachment—and we shall not find in them the *step fathers* of their country. A treaty which has bartered away their rights, cannot, will not be submitted to—Let us, then, my fellow citizens, rally round our representatives, and we may still be free!

ATTICUS.

August 21st, 1795.

THE

American Remembrancer;

OR,

AN IMPARTIAL COLLECTION

OF

ESSAYS, RESOLVES,

SPEECHES, &c.

RELATIVE, OR HAVING AFFINITY, TO THE

TREATY WITH GREAT BRITAIN.



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American Remembrancer, &c.

FROM THE NEW-YORK ARGUS.

C I N N A.—No. I.

Citizen Greenleaf,

TO expatiate on the justice, power, and resources of Great-Britain—to justify all her acts, however wanton and unjust—to depreciate his own country, and to place her in the wrong upon every occasion, are favourite themes with CAMILLUS. Hence it was no matter of surprize to find him in his third number, attempting a formal vindication of Great-Britain for carrying away the negroes, and ridiculing our claims, on that subject. As this is the first number that contains any thing like argument, it ought not to pass unnoticed. By the treaty of Paris, his Britannic majesty agreed “not to carry away any negroes from the United States.” This, says Camillus, must mean either negroes which *had been*, or which at the cessation of hostilities *continued to be* American property. When the meaning of an instrument is doubtful, there cannot be a safer or fairer way to obtain its true sense, than by considering its circumstances, and the views of the parties at the time of making the contract, and that they acted with good faith to each other. To apply this rule; during the late war, many negroes had been taken by, or had voluntarily joined the armies or gone into the garrisons of Great-Britain. To reclaim them, and prevent their being carried away, was an object which our commissioners had much at heart; and it is not easy to conceive how this object could have been expressed in plainer or less ambiguous terms. It will be remembered, that Franklin had an agency in that treaty; and perhaps no man ever excelled him in perspicuity and pertinency of expression; that those negroes and those alone were in the contemplation of both parties, results from the very nature of the case. It could not be necessary to guard against new depredations of this kind—peace being made, all hostilities of every kind ceased. As well might a clause have been inserted, to prohibit ships of war, of the different parties, from making

prizes during the peace; as the captains of such vessels would have been treated like pirates, so might every negro, or his value, been recovered by a regular course of law, from any person who had taken him after the peace, without any stipulation in the treaty for that purpose. To confine this article; therefore, to an engagement to abstain from further plunder, is rendering it altogether negative and useless; which is never to be supposed, and cannot be presumed to have been the intention of either party. The reasoning of Camillus is constrained and contradictory; in one breath, he likens the negroes to "horses, cattle, and other moveables, and as such liable to become booty;" in the next considering them "as rational beings, and as entitled to liberty under British proclamations, he concludes it would have been *odious* and *immoral* to let them pass again into slavery." Let us bestow a moment, for a moment will suffice, to detect the sophistry of each of these arguments.

Admitting that slaves may become booty, and that their property becomes vested in the captor, has he not a right to restore them, if he pleases, at a peace? did not this city belong to the king of Great-Britain by conquest? and did he not agree to evacuate it, rather than continue an unequal war? did not the American artillery, which he found in our forts, belong to him by the same right; yet he agreed to leave it behind? when he finds how ably his infractions of the treaty are defended by our own citizens, he will, no doubt, regret that he evacuated New-York as soon as he did; for the same argument used by Camillus to justify his detention of the western posts, would apply equally strong to his having kept garrisons till this time in our sea-ports, the prompt evacuation of which this writer considers rather as a matter of grace in his majesty, than of strict obligation on his part. To return—as the negroes which were taken, belonged to the king, he might prefer restoring them to their former owners, rather than be encumbered with their maintenance, which would probably have been the consequence of giving them freedom; to have sold them, would have ill comported with his dignity. It must be considered also, that in restoring them to their masters, he would take care to receive an equivalent for such concession. What this equivalent was, none but the commissioners can know; perhaps they agreed to *recommend* the tories to mercy in consideration of his majesty's restoring the negroes: whatever the inducement may have been, he promises, by an expression as latitudinarian as can well be devised, not to carry

away *any* of them, that is, he will leave them *all* whether acquired by capture or enticed away by his royal offers. If an exception had been intended, in favor of any class, it would have found its way into the treaty : none being made, the description must either be nugatory, or extend to all the blacks, who were then living, and in the power of his troops, arming them against their masters, and not in making amends for such an abominable warfare, by sending them home again. But if such promises were really made, or if a treaty of amity and alliance, offensive and defensive, actually existed between his Britannic majesty, and who had not been actually carried from the continent before the treaty, the other position cannot be supported without charging the king with the greatest duplicity and want of good faith, which I shall not offend Camillus so much as to suppose his majesty capable of. It would be odious and immoral, says he, to return to their former masters, negroes who had joined them on a promise of liberty. Any other but Camillus would have thought the immorality consisted in alluring away the swarthy domestics of America. Why not be explicit, and explain with good faith, to the plenipotentiaries, the solemn engagement he was under ; instead of stipulating a specific return, an equivalent might then have been agreed upon ; or if faith must be broken, either with the negroes, or with the United States, would it not have been a less reflection on Great-Britain, to give up the former, whom she was no longer able to protect, (as she did the tories) and to whom she was probably under no other than immoral engagements, contained in proclamations, issued upon the sole authority of some savage officers, than to break, in the very moment of signing, a solemn compact, formally and deliberately entered into with the latter ? was she not under as solemn engagements to the tories who had espoused her cause, and received protections from her generals ; yet their persons and properties were abandoned, or, which was the same thing, placed upon the precarious footing of a recommendation on the part of congress, for favor and pardon to the legislatures of the different states. Not a man of this description who had been banished, could return without a law for the purpose. Does Camillus imagine that the interests of these Africans lay nearer the heart of their gracious monarch, whose virtues and humanity he takes so much pleasure in blazoning, than those of his own deluded subjects, who, notwithstanding his deliberate sacrifice of them, continue as firmly as ever devoted to him.

But if his majesty be really (what no one but Camillus will suspect) so scrupulous about doing an odious action, or breaking his plighted faith to his black allies, why justify him for keeping his word at our expense? If he be as *just, magnanimous, and benevolent* as our envoy has represented him, why does he not pay for the liberty which he thought it his duty to confer on our slaves? Will Camillus pretend that his majesty's abhorrence of slavery induced him to carry these people away? The West-India Islands will testify against him—his majesty, like some people among ourselves (I do not mean the quakers, for I really believe them to act from principle) is a great advocate for manumission, when his own interests or those of his subjects are not affected by it, or when the United States, notwithstanding his unbounded affection for them) are alone injured by it.

As soon, then, as the British king found that his recent engagements with this country could not be executed specifically without violating his antecedent promises to the negroes, instead of quibbling, and putting on his agreement a construction which rendered it a *dead letter*, he would have acted more consistent with the character ascribed to him by the friends of the present treaty, by candidly communicating his embarrassments to our government. We should readily have consented to a pecuniary compensation; Camillus, it is true, asserts, that "when a party promises a specific thing, nothing but the thing itself will satisfy the promise."—If Camillus be a lawyer, he certainly knows that nothing is more common than a satisfaction in damages for the breach of a promise to do a specific thing; and that in a great variety of cases it is the only satisfaction to which the law can or will compel the delinquent party; and that such damages being paid, the promise is as completely satisfied as by doing of the specific thing. Thus, if a person contract to deliver me a ship, or a horse which he afterwards sells to another, or to come nearer to the case before us, he engages to restore me a negro which he afterwards sends away, and thus puts a specific performance out of his power, my only claim against him is for a compensation commensurate to the injury sustained by his breach of promise. It would be absurd in the extreme for America, at this time, to insist upon a return of those negroes. Many are dead; and of those who survive, the greater part must be in the decline of life, and would be of little use to their former masters. A compensation then is all that can be asked; this is precisely the controversy between the two governments. The United States (and Camillus will not contend against their right so to do) release G. Britain from

a specific compliance, and insist upon an equivalent in money. With what other view, then, but to deceive, does Camillus observe, that “the party to whom a promise is made, cannot be required to accept in lieu of it an equivalent? Did he not know that the United States were willing to receive, and asked for nothing more than an equivalent, so that there could be no necessity of enquiring into the right of Great-Britain to force them to it?

It is proper to subjoin, that the construction of this article by Camillus, is opposed to the interpretation which our government have uniformly put upon it, is contrary to the explanation of it by Mr. Jefferson, whose correspondence with Mr. Hammond is recommended, as the best antidote against the mischievous and humiliating doctrines, so warmly inculcated by this writer. Every American will turn with pleasure from a laboured panegyric of the British government, a strenuous and uncandid vindication of all its arbitrary proceedings towards this country, and from the degrading representation of the United States, which fill so many columns of Camillus, to the manly, energetic, dignified, and yet candid examination of Jefferson. In the writings of this invaluable statesman, he will discover the true source of controversy between the two countries. He will be shocked at the perfidy and duplicity of Great-Britain, and will be astonished at the forbearance of the United States, under the most aggravated and unprovoked insults and injuries. It is a work which should be in the hands of every man. It will teach us to love and respect our country, a duty which cannot be too strongly inculcated, when pains are taken to infuse a contrary sentiment.

I shall only ask, if Camillus is right; how happened it, that a majority of the Senate, at their late session, agreed to advise the President to renew negotiations with his majesty for a compensation for the negroes who had been carried away contrary to the 7th article of the treaty of peace? When so many respectable authorities concur respecting this aggression, it would evince a becoming modesty in Camillus to retract an opinion which ought to find advocates only in the British Cabinet.

July 29, 1794.

CINNA.

C I N N A.—No. II.

FAITHFUL to his promise, and meditating an attack upon Mr. Jefferson, whose arguments have hitherto been unanswered; CAMILLUS, in his 4th essay, proceeds to instance certain infractions of the treaty of peace on our part;—an accurate enumeration of these breaches would require, says he, a tedious research: and who, sir, has imposed upon you this odious task? Does the duty of a patriot, or a citizen, demand it of you? Would not your talents and ingenuity be better employed in vindicating the injured honor and rights of your country? Does it become you to rack invention to cover her with obloquy, and to hold her up as a faithless and treacherous nation? Does it comport with the character of a citizen of the United States, after their minister had silenced the objections of the British ambassador, to justify a perfidious prince for his breaches of faith and his violences towards America? will it answer any valuable purpose to stigmatise the legislature of your own state, for acts which preceded the treaty, and which were suggested by the spur of the occasion, and by a regard to self-defence? Will the recollection produced by a review of the conduct of the different parties during the war, be profitable, or conciliating? Will not every American recur to the history of those times to discover, not only the reasons which dictated, but a justification of the acts of which you complain? If he pursues the enquiry with pure motives, he will be astonished, *not* that the state of New-York did so much, but that her moderation was as great as it was. He will recollect, with emotions of pain and indignation, that the state was not only invaded, and its capital, and some of its most fertile districts in possession of a foreign enemy; but that she had also to encounter a more sanguinary foe, in those, from whose birth, situation, and connection, she was entitled to expect support and succour, in her arduous conflict for independence. These men not only turned their arms against their country, but, outstripping British cruelty, they introduced a warfare, which would have disgraced the savages of our wilderness. The peaceful farmer—the aged inhabitants of either sex, whose years and infirmities were respected by the troops of Great-Britain, and her merciless auxiliaries of Germany, found no quarter from this implacable and intestine foe. Their depredations were circumscribed by no principle or rule of war—thirsting for revenge,

rapine, plunder and secret death were their pursuit. Their success was proportionate to their malice. America being unable to extend her protection to an immense frontier, her citizens were driven from their farms—their property made a prey of; and they deemed themselves happy, when they could escape from assassination into exile and penury. Our seas and coasts swarmed with privateers, fitted out by these internal enemies; and even the Indians of America were piloted by them, to the peaceful dwellings of her citizens, and female and infants' scalps were often displayed as the joint triumph of those monsters of the human race! Who then can be astonished, that these provocations, which were repeating every day, should excite the most lively sensations of indignation and resentment? Who then can wonder, that our legislature should pass an act, which was not only extorted by a sense of injury, and the exigencies of the times, but was peculiarly calculated to protect our citizens from future plunder, and held out a gleam of hope to those who had already been stripped of their all, by this ruthless and unfeeling band? Forgive me, sir, if I describe your present friends in glowing colours. Humanity wished to forget forever, deeds of cruelty and horror, at the bare mention of which, the most obdurate and rugged heart revolts. America was content to drop the curtain on a tragedy, the catastrophe of which had confounded the adversaries of her freedom and sovereignty. This state in particular, [New-York] although her trade and frontiers had suffered the most, early manifested a conciliating and forgiving spirit. Persons who had betrayed the most rancorous temper, and had been banished for their enmity and *poverty* of spirit, were permitted to return to the bosom of their offended country. Men who had evidenced not only in principle, but in action, the most rooted hostility to our freedom and government, were permitted to remain, and to become a part of the great body politic. Instances, without number, of forbearance, lenity, and even of tenderness, forgiveness, and sincere reconciliation, might be produced; even rewards and public honors and offices have been bestowed on these men. Far from condemning a policy, to which, however, there were many objections, I glory in the liberality and munificence of my country. Nor was it my wish to rescue from oblivion, a memorial of the conduct of those who have been objects of their country's generosity and forgiveness. Camillus has courted, nay provoked the discussion. When it becomes necessary to exculpate our country from the reproach of cruelty and breach of faith, we must be permitted

to return to the times which produced the act, which, it is pretended, fixes this stigma upon her. If Camillus had taken this trouble, he would have seen so much room for recrimination, that in tenderness to the feelings of these unhappy men, he would have forborne some of his severe animadversions on the conduct of this state.

Having stated some of the provocations and inducements, we come now to the law itself, in which Camillus discerns one of the earliest breaches of the treaty of peace, on our part; Camillus was not more unhappy in reminding us of the conduct of the Tories, than he is unfortunate in this first proof which he instances of our breach of faith. The law to which he refers, is well known by the appellation of the trespass act. This law passed the 17th March, 1783. A mind, not warped by prejudice, nor disposed to deceive itself, is at some difficulty to imagine how an act, passed six months before the definitive treaty was signed, and more than a year, according to Camillus, before it became binding on the king, can be tortured into an infraction of that very treaty. At the time of passing this law, the legislature had a perfect right so to do; nay, it was part of their duty,—the war yet raged with unabated rigor: as the royal cause became more and more desperate, its friends became proportionably alert in their efforts to revenge a success, to which they could not reconcile themselves. Their last cruelties exceeded any of a former date. Every measure, therefore, which tended to curb the licentiousness of our domestic foes, to mitigate or check the horrors of a civil war, and to protect those of our citizens whose remote residence prevented their receiving any adequate security from the American army, was not only prudent, but necessary, justifiable, and humane. It was also believed, that few, if any, of the depredations and robberies, which were committed by the new levies and refugees, were at the time sanctioned by any military order; their own fury, and a thirst for plunder and revenge led them on; yet if a military order was admitted to justify their conduct, how easy would it have been to obtain one? Every man who had stolen a horse, a cow, or other property, without any authority, and converted the proceeds to his own use (and there were thousands who pursued no other business) would have sheltered himself from a just compensation, under an order, which might at any time have been procured. The legislature also knew (for it was composed of the most enlightened and meritorious patriots of the day, notwithstanding the odium which is now to be fixed upon it) that if any of the pro-

visions of the act should clash or interfere with any treaty made with Great-Britain, they would of course cease to operate, and that our courts would give effect to those clauses only which might not undergo such repeal.

Camillus, it is true, does not admit that treaties, made under the confederation, were paramount to the antecedent laws of the states. Proceeding, however, with more caution than usual, he does not flatly deny the position, but contents himself with observing, that it was a "question of *theory*, about which there was room for, and in this country did exist, much diversity of opinion." What is meant by any law being a question of theory, I do not well comprehend. What is the law in any particular case, in a foreign country, we have ever been taught to consider a question of *fact* and not of theory; and lord Mansfield declares, that such laws must be proved *as facts*. What the law may be, in any given case, may be a matter of uncertainty, and not known to every one, but it is still a question of fact, whether it be, as stated by one person or another. Where this diversity of opinion prevails, courts of justice alone can settle the question; and until this is done, we must resort, for information, to our national engagements, and the opinions of professional men. I do not mean to admit, that our courts have not determined the question; for it will be seen in the sequel, (and it is somewhat mysterious that it should have escaped the penetration of Camillus) that our courts have solemnly adjudged in favour of the treaty, when interfering with a contrary municipal regulation.

The question deserves a more minute examination; for if it can be shown, that all state laws, contravening the treaty of peace, were thereby repealed, and rendered null as to their future operation, all the elaborate reasoning of Camillus, and its superstructure, will be overthrown, and he himself be compelled, however reluctantly, to impute the first infraction to the account of Great-Britain. The proposition is so self-evident to an American lawyer, that without any proof, it forces the same conviction on his mind, as the plainest axioms of Euclid, "that the whole is greater than a part," or, "that all right angles are equal to one another," do upon that of a mathematician. To prove either, appears a work of supererogation; however, as the doubt is raised, we will attempt a solution of it.

By the 9th article of the confederation, "the United States in congress assembled, have the *sole* and *exclusive* right of entering into treaties and alliances." These articles were acceded

to by this state, by a solemn act of its legislature, passed the 6th of February, 1778. The people, therefore, of this state were as much parties to the treaty of Paris, as if they had been present in their proper persons, and individually affixed their signatures to it. How then could its binding force upon them ever become a question? Has Great-Britain ever entertained a doubt on the subject? Can one party to a contract annul it without the other's consent? Hence it follows, not only that treaties made under the confederation, were supreme laws of the land, but that they were so in a sense much more extensive and emphatical than could be applied to an act of the legislature. While the latter could be repealed or altered, the former could no wise be effected by a legislative act. Of little force, therefore, is the observation of Camillus, that "in the opinion of the legislature of Virginia, there were acts which had prevented, and might prevent the recovery of debts, according to the treaty." The legislature of Virginia may make, but cannot expound even its own laws, much less laws or compacts to which that state was only *one of many* parties. Their exposition belongs solely and exclusively to the judicial department. These (but perhaps it was unknown to Camillus) are the sentiments of the legislature of that very state. In an act of October, 1787, it is declared, "that it does not belong to the legislature to decide particular questions, of which the judiciary have cognizance, and that therefore it was unfit for them to determine on the validity of certain payments." The opinion, therefore, of any legislature on laws which already exist, is entitled to no attention; much less does such an opinion diminish the obligation or efficacy of them. Even in passing laws, if they exceed their authority (which may be the case) courts of justice will disregard and refuse to carry them into effect. If a case had been cited, of the supreme judicial tribunal of Virginia rendering a judgment conformable to what is stated as the opinion of its legislature, it would have been in point, and not easy to reconcile to the injunctions of the treaty.

After producing this opinion, Camillus demands, with an air of triumph and satisfaction, as if he had detected mr. Jefferson in a misrepresentation; "with what truth has it been asserted, that it was at all times perfectly understood, that treaties controuled the laws of the states? **I answer,** because it could not be otherwise, and that not only mr. Jefferson, but several professional and other characters of eminence, whom he consulted, (for extensive as his own experience was, he did not think it derogated from a minister of a free nation to collect informa-

tion from his fellow citizens) concurred in this opinion. It may well be doubted, whether any lawyer has ever seriously advocated a contrary proposition. "It resulted," says Mr. Jefferson, "from the instrument of confederation, among the states, that treaties made by congress, according to the confederation, were superior to the laws of the states." He adds, "we may safely affirm this to have been the general sense of those at least who were of the profession of the law." Mr. Jefferson, we shall see, did not speak at random, nor without authority, nor is he chargeable with the smallest misrepresentation. It gives me pleasure, I confess, to rescue the character of this gentleman, which has forced the admiration of America, from the aspersions of an anonymous writer, whose lucubrations hitherto may be regarded rather as a formal censure of his official conduct, than a vindication of the English treaty. Does it excite surprise, that Camillus wishes to render him odious? In his own writings the reason may be discovered. "Mr. Jefferson," says he, "is a candidate for the presidential chair!"

Governor Collins, Mr. Channing, district attorney for Rhode-Island, governor Huntington, Mr. Lewis, district attorney for Pennsylvania, Mr. Monroe, a senator from Virginia, and now minister in France, and Mr. Harrison, our district attorney, and a gentleman of well earned legal reputation, have all sanctioned an opinion, which Camillus would fain persuade us is a matter of doubt. The name of Hamilton, whose legal acquirements, and other splendid talents, have so often astonished his fellow citizens, and whose authority it is presumed, will not be disputed by Camillus, may also be added to a list already respectable. In the case of Waddington and Rutgers, which has been oftener mentioned than its importance deserved, he was counsel for the defendant, and advised his client to rely on the treaty of peace, which plea was allowed by the court. It will not be impertinent here to notice a remark of Camillus, not as a proof of candour, but of his solicitude to mislead: "though," says he, "there may have been no formal decision of *our* courts, enforcing the exceptionable principles of the trespass act, yet there never was a decision of a supreme court against it." Did not Camillus know, that the supreme court had decided against principles as exceptionable in other acts, merely because they were at war with the treaty of peace? He knew it, and it would have been no reflection on his candour to have stated the instances. Not having done so, the following extract of a letter from Mr. Harrison to Mr. Jefferson, will remind him of some cases in which he was pre-

bably concerned as counsel for one of the parties.—“The operation of this act,” says he, speaking of the act relative to debts due to persons within the enemy’s lines, “became soon after the peace, a subject of much complaint, grounded upon that article of the treaty which forbids any impediment to the recovery of the full value in sterling money of all bona fide debts, and that which declares that no person shall suffer any future loss in his person, liberty, or property. With regard to British creditors, who were supposed to be the proper objects of the 4th article of the treaty, the *superior courts of the state soon restrained the operation of the act, and I do not know of a single instance* where they have been held to be affected by it.” Here then we have not only decisions of our superior courts in point, but are told, by a gentleman of great accuracy, that there is not one instance to the contrary. How powerful is truth! deception may continue for a day, but the veil will soon be rent, and fallacy and error, however sophistically arrayed, will be stripped of their ornaments, and exposed to public view. Let this be a caution to all who read Camillus, to suspend their opinion until his assertions are examined. I forbear, for the sake of brevity, to transcribe the opinions of the other gentlemen who have been named, although they are equally strong, and more direct in point than that of Mr. Harrison. They are all as positive as language could render them, and bear honorable testimony in favour of America. They should be consulted by those, who, like Mr. Jefferson, “will be glad to find an exculpation of our conduct,” which is glanced at by this writer as a disingenuous trait in his ministerial career. Governor Livingston also, in a letter dated 15th June, 1789, to the same minister, declares, that “he does not know a *single instance*, in which the state of New-Jersey had contravened the treaty.” It would be endless to cite proofs on this subject.

Treaties, then, from the very nature of our union, being the supreme laws of the land, it results necessarily, that its provisions could not be controuled by the laws of any state, and that no one could reasonably complain of the existence of such acts, which, by the treaty, were rendered nugatory, until obedience to them was enforced by the courts to whom the exposition of such acts and treaties was delegated. Let Camillus produce a single instance of the supreme judiciary of any state rendering judgment contrary to the plain sense of the treaty—until such examples are produced, it becomes us to defend our country from the unjust imputations of the British ministry and their agents, and not by subtle and fine-spun distinctions and doubts, give

efficacy to their calumnies. Among the subterfuges, calculated to fix a reproach upon the United States, may be classed the remark of Camillus, that, "under the confederation, they had no courts of their own to expound and enforce their treaties as laws." We are at a loss which to censure most in this observation; its want of candour, or the unqualified reflection it carries with it on the state judiciaries. If treaties were laws of the land, which, perhaps, was never seriously doubted, were not the state judges, then, as much as the federal judges are now, sworn and bound to conform to, and make them the rule of their decisions? He subjoins, with becoming delicacy, "it was believed that a majority of our supreme court bench would over-rule the plea of a military order." How was this discovery made? did the judges favour him with an extra-judicial opinion? or was he gifted with the spirit of divination? Thus, belief, surmises, and suspicions must be resorted to, to fix upon our state, the ignominious charge of breaking her solemn engagements with foreign powers. To the credit of our bench, it ought to be mentioned, that it has, ever since the peace, been filled with characters of the most unblemished reputation and integrity, and that the confidence inspired by their decisions, has been so great, that perhaps in no state in the union, is less business done in the federal court, than in New-York. It would hardly receive credit, was I to mention how very few civil actions have been commenced in these courts, since their organization in this state.

It cannot be necessary to follow Camillus through his invidious enumeration of the other acts of this, and other states, which he considers as violations of the treaty; the same answer applies to all. The treaty could not be controuled by any state law; but it is alleged, that in some cases, repealing acts were deemed necessary by the legislatures of the different states. This does not alter the case. It was done for the greater caution, and furnishes proofs of a sincere spirit of accommodation. In some states, a repeal would probably not have taken place, if their legislatures had not observed the laws in question had already yielded to the superior mandates of the treaty.

But admitting, for a moment, that *legal* impediments once existed to the recovery of British debts, will it be contended, that they continued to operate at the time of the negotiation between mr. Jay and lord Grenville? if not, why fear to meet the question, and discuss the respective claims of the two countries? If America had done wrong, what could Great-Britain desire more, than a redress of the injury which had already

taken place? mr. Jay could have informed lord Grenville, with confidence, that for six years past, our courts were open to British creditors, and that probably few, if any, remained unsatisfied. This would not have pleased his lordship. Knowing that Great-Britain had nothing at present to complain of, and that our demands were of the most serious and extensive nature, he sedulously avoided a discussion, which a mere novice in diplomatic controversy, could have managed on our part, so as to refute every possible objection of his lordship. Every "enlightened American," therefore, cannot but regard the pretended apprehensions of our envoy to meet so plain a question, as a base dereliction of his country's honor, as a mean sacrifice of her rights; as an ill-timed delicacy, and as a most unwarrantable concession to Great-Britain.

New-York, August 9th, 1795.

CINNA.

P. S. It has been thought best to subjoin the opinions of the gentlemen above referred to; they harmonize, and are so much in point, that we shall find it impossible to withhold our assent from mr. Jefferson's proposition in its greatest latitude, "that treaties made by congress, according to the confederation, were superior to the laws of any state."

Governor Collins says, "the treaty, in all its *absolute parts*, has been fully complied with; and to those parts that are *merely recommendatory*, and *depend upon the legislative discretion*, the most candid attention has been paid;" plainly implying, says mr. Jefferson, that the *absolute parts* did not depend upon the legislative discretion.

Mr. Channing, speaking of an act passed before the treaty, says, "this act was considered by our court, as *annulled by the treaty of peace*."

Governor Huntington says, "the courts of justice adopted the treaty *as a principle of the law*."

Mr. Lewis—"the judges have uniformly and *without hesitation* declared in favour of the treaty, on the ground of its being the *supreme law of the land*."

Mr. Monroe—"both court and counsel, in Virginia, avowed the opinion, that the treaty would controul any law of the state opposed to it."

The senators and representatives in congress from Maryland, in a note to mr. Jefferson, inform him, "that the legislature of Maryland, enacted a law declaring the treaty the *supreme law of the land*, which was," they add, "but a compliance in form

with what had, in *effect*, taken place, *immediately* after the *exchange* of the ratifications of the definitive treaty."

William Tilghman, a lawyer of Maryland, writes as follows: "we have recognized the treaty as the law of the land, by a particular act of assembly; and our judges have given one very striking proof of their impartiality in the construction of it. I allude to the decision of the general court in favor of British creditors, against a number of Maryland citizens, who, during the war, deposited paper money in the treasury, under the sanction of a law, at that time existing, in satisfaction of their debts: whether the treaty should have such retrospect as to avoid these payments, was certainly a doubtful point."

If these instances, an enumeration of which would have occasioned no "*tedious research*," (mr. Jefferson having been at the pains of collecting them) do not dissipate the doubts of Camillus, if he really entertains any, neither will he believe, if one rise from the dead. It affords matter for serious reflection, that the talents of this gentleman, should be so strenuously exerted to traduce his country, when ample materials were at hand, not only for exculpation, but for eulogy and commendation.

August, 10th, 1795.

CINNA.



C I N N A.—No. III.

IF Camillus, instead of vindicating mr. Jay, at the expense of his country's faith, had recurred to his official reports, while secretary for foreign affairs, an apology would have presented itself, not quite so grateful perhaps to the pride of his friend; but less constrained, and more agreeable to truth, than the one which he has assigned. It is well known that mr. Jay, while at the head of that department, either from want of information, or from taking a less comprehensive view of the subject than his successor did, or from some other less pardonable motive, in very unqualified language, not only excused Great-Britain for her infraction of the treaty, but threw the whole censure on this country. It was easily foreseen that the negotiation in the hands of a man, thus committed, must ei-

ther prove abortive, or terminate, as it has done, dishonorably to America. A virtuous minority in the Senate, remonstrated in vain against an appointment which was not only a direct attack upon the constitution, by destroying the independence of the judiciary, but which, from the character of the envoy, augured nothing but disappointment and ignominy. Mr. Jay's hostility to the French revolution was also well known. This enmity betrayed itself, not only in his more private sentiments and conversation, but was most conspicuously displayed in the libel, which he, in concert with one of our senators, published against the minister of that republic. The manifest object of that too-celebrated certificate was to discredit the French cause, and to extinguish that enthusiastic ardour for its success, which had become almost universal in the United States. The attack upon mr. Genet terminated unfortunately and disreputably for the contrivers of it : it was not therefore to be expected that a man (whose very friends impute to him, a temper bordering on the vindictive) should ever forgive the triumph of a minister, who not only exonerated himself from the charge, but in a manner the most public and unequivocal, convicted his antagonists of having propagated a deliberate misrepresentation. It will be recollected, that mr. Jay's *own* witnesses proved the innocence of mr. Genet. What could America look for from an envoy, whose mind had been recently embittered against the French, by a personal defeat, but as many marks of animosity towards that people as could decently be inserted in a public treaty. These observations may at first appear impertinent, and nowise connected with the merits of the treaty; but when Camillus, and every other writer in favor of it, uniformly represent mr. Jay as the properest man in America to have been entrusted with the negotiation, and hence infer that it cannot be bad, it becomes useful to examine the position, and to show, as has been done, that a more unfit character could not have been sent upon so important an embassy.

It may be said, the documents afterwards collected by the industry of mr. Jefferson, and his masterly reasoning upon them, placed the questions, which had been conceded by mr. Jay, in a light which dissipated all objections, and carried conviction to every unprejudiced mind. That mr. Jay, therefore, would have nothing to do but to bring forward the arguments which had already been managed with so much success by the American secretary. But those who reason in this way, forget how difficult it is for a man who stands committed on record, to renounce his errors. From pride of opinion, and inordinate

self-esteem, no one is exempt; how then were we to hope that mr. Jay, after hazarding opinions on this side of the Atlantic, which had already proved the bane of his country, in all her subsequent negotiations with Great-Britain, should recede immediately on his arrival at the court of St. James's, where every pains and flattery would be practised, to keep him in good humour? Besides, his sentiments being in possession of the British minister, might be used to great advantage, if he attempted to change his ground. Rather, therefore, than recede at the expense of his reputation, and at a certainty of being self-convicted of contradiction and inconsistency, every subtilty and finesse would be put in use, and in the last resort, the interests of America would be regarded as a small sacrifice to personal honor. The envoy well knew, that however important these sacrifices might be, men would not be wanting to applaud the wicked deed, and to blazen to the world his past services and patriotism. The event has corresponded with his expectations. Instead of declaring, which would have been the language of sincerity and candor, that it was impossible for mr. Jay, who was already committed, to invite a discussion with the British cabinet, every deception is practised to impose upon the public, a belief that such discussion, in the hands of any one, must have been inauspicious to the United States, and the efforts of mr. Jefferson, to rescue us from the base imputation of his predecessor in office, are contemptuously stiled "a mere essay of polemical skill, or a convenient ingredient of negociation."

Citizens of America! be on your guard. Since the epoch of your independence, a more important crisis than the present, never presented itself. To entice you into an approbation of a compact too degrading to be vindicated, arts, as base as the instrument itself, are put in practice—your confidence in a minister, who never ceased to defend your rights, and who was forced from his high station by the prevalence of a British faction, is attempted to be shaken. His manly and energetic exposition of your violated rights is turned into ridicule—his candor is impeached, and his patriotic labours in your service are branded as the offspring of "hollowness and fallacy." Men, like these, are, if you follow the pernicious counsel of Camillus, to be "expelled from your confidence." These are the men against whom you are cautioned, as laying "artful snares for your peace!" Are unsupported suggestions, like these, the effusions of patriotism and virtue? Do they not betray, notwithstanding a thousand professions to the contrary, a mind hostile to your internal peace, and tainted with the corruptions of a

British court! If you pursue such intemperate advice, and expel from your confidence, men of the description glanced at by Camillus, where will the expulsion end? a proscription more dreadful than that of Robespierre will succeed. The first and best patriots of America will fall victims, and all to gratify the insatiable ambition of a few aspiring individuals, who can brook no opposition, and unless they can controul public affairs, are perpetually disseminating calumnies, and sowing the seeds of civil dissention and discord. This is remarkably the case with the writer, whose defence, as it is hitherto ludicrously termed, has occasioned these remarks. His preliminary observations, and but little else has yet appeared in his first six numbers, are calculated to impress a belief, that an opposition to the treaty originated with the *personal enemies* of mr. Jay, or with those who have been uniformly opposed to the general government. These remarks partake more of intemperance and illiberality than of argument. As an address to the passions, they may be overlooked, but if they are designed to convince our reason, we turn from them with pity and contempt. What, sir, are the personal enemies of mr. Jay dispersed from one end of the continent to the other? Many respectable names, who stand foremost in the opposition, are, or have been, his friends. They regret the wounds which his feelings must sustain by their opposition to an association in which he has borne so conspicuous a part; but the calls of patriotism have stifled those of friendship, and it is a circumstance, certainly not favourable to the treaty, that many men, who had been in the habits of intimacy, and of thinking well of mr. Jay, have been most undisguised in their expressions against it. That mr. Jay has his personal enemies, is not doubted; no man is without them; and perhaps it would be difficult to assign any good reason why he should be exempt from this common lot of humanity: but that these enemies have invariably arrayed themselves under the banners of opposition, remains for Camillus to prove.

The other assertion is less excusable, because Camillus well knew, that among those who opposed the treaty, were some of the best friends to the national government; some who had not only signed, but had ever warmly supported the constitution of the United States. The names of Langdon, Pinckney and Rutledge, appear to the constitution of the United States. I should prove as tedious as Camillus, were I to enumerate all the instances which occur of the most zealous federalists, who have every where appeared among the opposers

of this infamous compact. Not only the political characters, but the measures pursued by those who condemn the treaty, have fallen under the lash of his pen. No excuse can be offered for his misrepresentations on this subject—That the town meeting of Boston denounced it the very day after its arrival, and, without a reading, is an assertion directly opposed to all the testimony we have of their proceedings. The account of our own town-meeting, and of the manner in which it was obtained, is too gross to impose on any of the citizens of New-York. Who are intended by the “leaders of the clubs” who were seen harranging at every corner, to stir up the citizens of to imitate the example of Boston, I am at a loss to ascertain. Some of the most active enemies of the treaty belong to no club at all; and instead of taking pains to induce the citizens to assemble, such was the universal execration in which the treaty was regarded in New-York, that it was with some difficulty the meeting was postponed to so late a day. That a *respectable body* of the merchants endeavoured to moderate this violence, and promote a spirit favourable to discussion, comports as little with the fact as several of the assertions which have been already noticed. The truth is, that two or three zealous partisans, alarmed at the increasing opposition, and jealous of the effect which a legal and peaceable expression of our sentiments might have on the president, collected, in great haste, and at a late hour of the night, a few merchants, respectable neither for their numbers, their patriotism, nor abilities. It is in the power of Camillus to give their names to the public, who will then judge between him and me. These merchants lent their names to an address prepared, probably by their leader, and containing a proposition as absurd as it was insidious. The citizens of New-York had too much good sense to be the dupes of it; they discovered, in the proposal to discuss, not only a reflection on their understandings, but a jesuitical contrivance to procrastinate, until it became too late, a decision on a subject too momentous to their interests, to be longer delayed. When would the discussion have ended? A few days after this meeting, the defence of Camillus appeared, and he has not yet finished the *first* article!—The citizens, therefore, after having maturely considered the treaty, and attended to a discussion which it had undergone for more than three weeks in the public prints, assembled, it is true, not to listen to a “*respectable body of lawyers or merchants*,” but to unite with their-fellow citizens of Boston in

an address to the president against its ratification. In numbers, respectability, good order, and decorum, no assembly in this city ever exceeded the one which took place on the day when the resolutions were agreed to.

Before this meeting is dismissed, I must be permitted to advert to certain measures which have been pursued by a party in this city in consequence of it. The resolutions were scarcely sent on to the president, before serious attempts were made, not only to represent the meeting as illegal, turbulent, and unconstitutional, but to incite our fellow-citizens to a belief, that measures were adopting to overthrow the government, and to introduce anarchy and confusion. With this view, invitations were secretly distributed among the friends of order, to meet privately and in the night. The first meeting was so very thin, that it was thought prudent not to proceed to business—a second attempt was made, which succeeded but little better. After sending away those who were supposed not to harmonise in sentiment with the leaders, the business was opened—Philippic succeeded philippic against those who had exercised a right, secured to them by the constitution of the United States, of “assembling peaceably, and petitioning government.” Every art, seconded by all the powers of eloquence, was practised to infuse the most horrid suspicions into their minds against their absent fellow-citizens. The result was, as has been asserted, and not contradicted, a determination to sign an instrument, pledging themselves to each other to support the government and constitution of the United States.—To carry into effect so laudable an association, committees are to be appointed in each ward, to call upon the citizens for their signature.

Citizens of New-York! be not rash or precipitate—this association, which at first view appears harmless and even praise-worthy, is big with consequences, fatal to your internal peace and happiness. Are we not already under the solemn ties of an oath to support the constitution and laws of our country? Is it not our interest so to do? Notwithstanding the wicked calumnies of our enemies, have we ever discovered in our words or actions, a spirit hostile to the one or the other? Have we ever since the adoption of the constitution, opposed any laws of the United States? Have we not, on the contrary, manifested a patriotic jealousy, upon every occasion, when attempts have been made to violate its sacred injunctions? Because then, in this awful crisis, we came forward, and united our warning voice with that of America, against a compact

fraught with destruction, are we to be stigmatized as anarchists?—are we to be separated from our fellow-citizens, and pointed at as seditious enemies of our country? Can those who advise you to so invidious a proceeding, be actuated by friendship for you, or a zeal for the public good? Are not rather personal aggrandizement and importance, their real objects? Unaccustomed to the smallest controul, they had rather arm citizen against citizen, than sink peaceably into obscurity, or experience a disappointment in a single scheme of their projection. Let those, therefore, who wish to increase the dissention which already unhappily prevails in this city, and those only, countenance this association. To ask a fellow-citizen to sign it, carries with it an insult, and will probably be regarded and resented as such by the greater part of the community. Such a request must proceed from suspicions of their patriotism or honesty. Good men want no additional tie, bad men will disregard any. To the honor of mr. Willcocks, it ought to be mentioned, that he vehemently opposed, but without effect, *nocturnal* meetings of that nature, and expatiated, at some length, on their dangerous tendency.

After unwearied pains to prejudice his readers against the adversaries of the proposed treaty—Camillus proceeds to alarm our fears, and to compel us (to use his own expression) to “surrender our reason to the empire of our passions.” The horrors of war are presented to the affrighted imagination, as the certain consequences of a rejection of this treaty by America. What, sir! is the treaty so fundamentally bad, that nothing but an apprehension of the waste of war, and a display of torrents of human blood, can reconcile us to it? but whence the probability of a war? will Great-Britain, exhausted as she is by her contest with France, be anxious to make new enemies? Will her subjects urge her to the conflict? Will they not rather, as they have already done, take the part of America, and endeavour to compel the ministry to reasonable terms of accommodation? Is our commerce an object of no importance to Great-Britain? Is the aid we could furnish to the French in the reduction of the West-India islands, a matter of no moment? But if a war must take place, before our differences can be adjusted, will it be an advantage to America to postpone it until a general peace takes place in Europe? Will not Great-Britain alone gain by the delay? Nothing but our extreme pusillanimity will ever involve us in a war with Great-Britain. We shall permit her, by our tameness and submission, to proceed so far that she will hardly know how to recede with

honor. It is a fact, that at this moment, *we experience more than one half of the evils of a state of war, without deriving from it any one of its advantages*; patience under our accumulated insult and injuries, is magnified by Camillus into a “dignified moderation,” and our “government,” by its mean submission to a licentious tyrant (whose depredations on the ocean exceed those of the pirates of Barbary) has “acquired,” according to this writer, “a new elevation.” Would to heaven the evils we have to complain of, were past! we might then estimate the costs, and it might be prudent not to hazard a war for the sake of compensation. But the injuries we have remonstrated against, are repeating and increasing every day. Our ships are daily captured, our seamen impressed, our public dispatches opened, and our very harbours afford no protection to the minister of an ally; and yet with this despot we are to form an unequal treaty. Our blood freezes with horror, at a bare mention of the unnatural connection; and yet to bring it about, our constitution must be violated, our characters and rights prostrated—outrage and insult must be ignominiously submitted to—American honor must receive a stain too foul ever to be effaced—and public confidence a wound which will baffle the healing powers of time. *Rouse, then, citizens of America! exercise, before it be too late, an alienable right. Convey to the president, in fair, but respectful language, your sentiments on the impending danger. He will listen to the voice of his fellow citizens, and pause before he barter away their dear-bought privileges.*

August 11, 1795.

CINNA.

C I N N A.—No. IV.

CAN there be a stronger proof of the demerits of the treaty, than the mode which is pursued by Camillus in its defence? Instead of proceeding directly to a discussion of the different articles, his readers are not permitted to form a judgment until they are satisfied that Britain has been as immaculate as she is haughty and powerful—That America, having been treacherous, ought to be as humble and submissive as she is weak and defenceless—That the opponents, to a man, are

actuated by *personal malignity* towards mr. Jay, or a wicked desire to overthrow the government, and introduce anarchy and civil discord—and, that a war with Great-Britain will be the inevitable consequence of a rejection. These remarks have already been opposed by others, which, unless I mistake, have not only detected their sophistry, but exposed their pernicious tendency. Admitting all these matters to be exactly as stated by Camillus, how do they justify an inference that the treaty is a good one? They may prove that Great-Britain cannot be expected to make an equal commercial connection with this country; but will it thence follow, that we are bound to make a disadvantageous one with her? No opinion is better founded, or prevails more universally, than that the fewer European connections we form the better. We possess the means of a growing and extensive commerce. The articles we export, particularly provisions and raw materials, being of the first necessity towards the support and manufactures of other countries, there is no danger of not finding a market for them. To Britain, in particular, our commerce is of the highest importance. In return for the manufactures which we take from her European dominions, we send her provisions and raw materials. The balance, which is generally against us, we pay in specie. It will, therefore, certainly be her interest and policy to continue and extend a trade so lucrative and important, without a treaty. If she chooses to keep all her West-India ports shut against us, we can obtain from the islands of other powers the same articles which they produce; and, in times of scarcity, which very frequently occur, they must have recourse to America for provisions and lumber. In every respect they are more dependent upon us, than we are upon them; and we shall soon force from them a much more advantageous trade than we can expect to obtain by treaty.

Thus circumstanced, America should keep the staff of commerce in her own hands. She ought not, except in very particular cases, to form treaties of commerce. If she remains unfettered, she may avail herself of any advantage which may offer from the imprudence or situation of other countries. Let her make such regulations as are best calculated to promote a spirit of enterprise—to add to her riches, and to increase the industry of her inhabitants, and let her have courage and constancy enough, never to depart from them in favour of strangers. In her present defenceless and infant state, it is next to madness to attempt forming a connection with this nation, without making sacrifices, and consenting to restraints far be-

yond those which the laws of nations impose, which ought perhaps to form the only rule between two commercial powers. But if a treaty with Great-Britain, under any circumstances, be proper, why insert in it matters which have no relation to commerce, and which properly form materials for a separate connection? I mean the respective complaints of the two governments against each other. By inserting provisions for an adjustment of these complaints in a treaty of commerce, Great-Britain has not only exacted unreasonable concessions for them on our part; but if a ratification does not eventually take place, the whole ground must be again travelled over, and probably at a time when Great-Britain will be in a situation to hold a tone still more haughty and imperious than she now does. Perhaps, indeed, this was one reason which induced the advisers of the measure to keep from the senate the real object of mr. Jay's mission; certain it is, that from the president's message, they had as much reason to believe that an alliance, offensive and defensive, was in agitation with Great-Britain, as a treaty of commerce; and yet by the constitution, all treaties are to be made "by and with the *advice* and consent of the senate." The plain meaning of this clause is, that no treaty shall be negotiated without the *advice*, nor ratified without the consent of the senate. This construction has been sanctioned on other occasions, by the president himself. Even with Indian treaties, he has, previous to negotiation, submitted to them the contents and taken their advice on every part.

The term. *advice* refers naturally and obviously to negotiation. Would it not be absurd to say, that advice was necessary after a thing was done? Consent alone could then be required. There is, besides, a manifest propriety in the president's consulting the senate before hand. The person employed to negotiate would then act with the greater confidence, knowing, that his instructions proceeded not from the president alone, but were the result of the accumulated wisdom of the senate: there would be less danger, also, of a refusal to ratify on their part, which may sometimes be productive of national jealousies, wars, and other calamities, it being unusual not to ratify a treaty made with a minister properly appointed and instructed. Thus, whether we consider the policy of making any treaty with Great-Britain, as an abstract question, or the secret and clandestine manner in which the present one originated, we shall find much room for doubt and censure. But it will be said, we have already treaties of commerce with France

and other nations; true, and the one with France, though in every respect more favourable than the one under consideration, has been the occasion of much perplexity and embarrassment to our government in the present war. Let ever so much care be used to make them explicit, and leave no room for construction, still doubts will arise, in the solution of which, not only the parties immediately concerned, but other nations, become deeply interested. This has been the case with the French treaty. Mr. Genet, in behalf of his republic, contended that the right of arming privateers in our ports, and other privileges, were secured to it by the treaty; all the other belligerent nations became parties to, or were interested in the controversy; and had not our government opposed a claim, which was certainly ill-founded, a war with them might have been the consequence. But if we had no treaty at all with France, we might, as a neutral nation, have opened our ports to the privateers and prizes of all the powers at war, without giving offence to any. Our other treaties, therefore, instead of militating in favour of such connections, furnish very strong, and, if I may use the expression, very *feeling* arguments against them.

While on this subject, I cannot forbear to remark, that a nation weak at sea, as America now is, and must ever continue, unless a different system is speedily adopted, can never promise herself any good from the strictest commercial stipulations on the part of a nation which is emphatically become mistress of the ocean. With such a power we had better have no connections, except such as arise out of the laws of nations. We shall not only be inclined, but compelled to observe our engagements, while Great-Britain will regard them only as long as she finds it her interest, and will laugh, if not insult us, when we complain of her infractions.

I come now to the sixth number of Camillus, in which he accounts for no provision appearing in the treaty against the pressing our seamen. The object is admitted to be of the last importance to the United States; but Camillus is at a loss to know how it could have been done. "A general stipulation against it," says he, "would have been nugatory, if not *derogatory*." Could there be any thing derogatory in Great-Britain saying she would abstain from an infamous practice, which perhaps no nation but America ever submitted to so long and so patiently. If her existence and safety depend upon her maritime superiority, is this superiority to be maintained at our expense? Is one of our most useful classes of citizens

to be forced into her service, and add to her aggrandizement, to the ruin of our own commerce? and when we ask her to stipulate against such outrages in future, is insult to be added to injury? Are we to be told, that until the Americans change their language and looks, it is impossible to discriminate between the seamen of the two nations? Methinks every seaman found on board of an American vessel, and speaking English, should be, *prima facie*, deemed a citizen of the United States, and should be protected as such, until he was proved a deserter from, or a subject of Great-Britain. If the captain of an American frigate should take it into his head to press into our service the crew of an English merchantman, merely because they spoke English, and looked like Americans, would Great-Britain submit to the indignity? but if our flag is not to protect them, where is the difficulty of each man being furnished with a certificate of his birth or citizenship, authenticated according to a prescribed form? No, says Camillus, who has always an answer ready, when Great-Britain is to be exculpated, this mode is liable to deception, and therefore cannot be relied on. Truly, sir! your ingenuity astonishes me. Because, now and then, an imposition may be practised, because a perjury may sometimes be committed, all our mariners are to be at the mercy of Great-Britain. Why not be explicit, and tell the truth at once. Great-Britain finding it very convenient to man her navy with our seamen, and her national safety being at stake, insists upon, and will exercise, the right of taking them wherever she finds them. She would not, therefore, consent to abstain from a practice which she well knows we dare not to resent. Our minister would have acted with becoming dignity, if he had broke off the negotiation, until she had consented to an article of more importance to this country than all the others put together, and which would have made some amends for the innumerable advantages which Great-Britain derives from the treaty. The rights and security of these much-injured and useful men have been most wantonly abandoned: nor do they alone feel the effects of this abominable species of depredation. The merchants, too, by the exorbitant rise of wages, which must advance in proportion to the numbers of seamen lost in this way, suffers most severely—and, in a little time, if the practice continues, the United States will hardly be able to man a single frigate. Humanity pleads as loudly as interest, in favor of the stipulation; but alas! we find few articles in

the whole instrument, which, as they affect America, have been dictated by either of those sentiments.

Another part of the reasoning of Camillus must not be overlooked. "Our right to an exemption," says he, "is perfect by the laws of nations; and a contrary right is not even pretended by Great-Britain." It were to be wished that Great-Britain would rest contented with a bare *pretension* to this right. Unfortunately, she exercises it every day; and thousands of our fellow-citizens, notwithstanding the *exemption* to which they are entitled, are dragged from their own vessels into a service which they execrate. If the laws of nations secure us an exemption, where could be the harm of a declaratory article to that effect? Other parts of the treaty, when against America, have been justified by some, and probably will be by Camillus, because of their conformity to the laws of nations. Thus it has been said, and no doubt will be repeated, that by those laws, free vessels do not make free goods, and that therefore, Mr. Jay yielded nothing, when he consented to an article of that kind. Why then should not Great-Britain humour us in our turn? If Mr. Jay is justifiable for doing us a greater injury with one stroke of his pen, than he can repair if he lives to the age of Methusalem, because the law of nations was on his side, why not expect, nay, insist upon the same complaisance from Great-Britain? to what inconsistencies and shifts are sensible men driven, when they vindicate a bad cause! to what an abject state, my countrymen, are you reduced! Great-Britain is become sole arbiter of your rights, and the men whom you have loaded with honors and offices, and who for years have drawn all their support from your coffers, and who ought in gratitude to defend you, not only consent to surrender your persons and liberties, but insult your understandings by an attempt to make you believe that they have studied your true interests in so doing—God forbid! that some dark and wicked project should lurk behind all this mysterious conduct. Time alone can discover, why Americans are to be dragooned just at this time, at the evident hazard of a rupture with France, into this new and disgraceful connection. Events, yet in the womb of time, must develop whether Great-Britain has promised any, and what aid to a certain party, in the attempts it may make, to strengthen the government, and give it, as it is modestly called, a little more energy. In the mean while, let us be vigilant, and we shall defeat every attempt upon our independence, and cover

with confusion those who dare to raise a sacrilegious hand against our free and happy constitution.

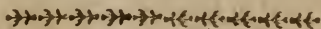
We are now arrived with Camillus at the first article of the treaty. The way has been tedious and disagreeable. He has told us, out of *pure patriotism*, many unpalatable *truths*. Thank God, notwithstanding all his pains and eloquence (for even his enemies must allow him to write well) my former good opinion of my country is unshaken. Her conduct with respect to Great-Britain will bear the strictest scrutiny. She has, indeed, been more sinned against than sinning. If I am mistaken, the delusion is pleasant, and I hope Camillus will not think me obstinate, when he is assured, that hitherto I have not discovered the strength of any ground he has thought proper to take.

In discussing the first article, Camillus encounters an objection, stated by the Charleston committee. It must be confessed, there does not appear to be much force in the objection, and yet, as some British subjects were proscribed during the war, it may be a doubt whether those of that description will not be permitted to return under the treaty. It was, at any rate, hardly worth while to find fault with this article, and perhaps somewhat puerile in Camillus to take so much trouble, seriously to combat, what the objectors themselves could not have laid much stress on. The committee had, perhaps, discovered so many faults in the other articles, they thought it impossible there should be an innocent one in the whole treaty, whatever its appearance might be.

August 13, 1795.

CINNA.

[TO BE CONTINUED.]



SOUTH-CAROLINA—WASHINGTON DISTRICT.

September 16, 1795.

THE Franklin, or Republican Society of Pendleton county, having, by the watchful vigilance of their standing committee, on a most pressing occasion, been called together to give their opinion on a public measure—a right they will not tamely relinquish, nor resign but with their lives!—having taken into consideration the ruinous treaty *proposed* and signed by John Jay, the American ambassador, with his Britannic ma-

jeſty—a treaty as deteſtable in its origin, as contemptible in its event!—a treaty which can never be enforced but by the bayonet!—having fully weighed it in all its articles—and taking into view, that when the complaints of a brave and powerful people are obſerved to increaſe in proportion to the wrongs they have ſuffered!—when, inſtead of ſinking into ſubmiſſion, they are roused to reſiſtance! the time muſt come at which every inferior conſideration will yield to their ſecurity—to the general ſafety of the empire!

There is a moment of difficulty and danger, at which Britiſh flattery and falſehood can no longer deceive, and ſimplicity itſelf can be no longer miſled!—that period has at length arrived.

When we ſee a man improperly appointed to negotiate one of the moſt important treaties, becauſe not properly, not conſtitutionally *adviſed*—that this man was the moſt improper, becauſe his attachment to Britain, and averſion to France, were notorious!—and that he was altogether an objectionable character, becauſe, (in admitting doubts to be ſtarted by Britain about our line, and to which *he* acceded!)—inſtead of ſhowing a thorough knowledge of his country—appears to have been wretchedly ignorant, and conſequently either ſhamefully impoſed on, or *corruptly* influenced!—who, inſtead of uſing that policy which ſhould have “extorted from Britain, in her preſent ſtate of humiliation, (and which could not be hoped from her juſtice)” a reparation of reiterated wrongs!—was the *firſt* man to propoſe to ſubmit to a treaty, which, if adopted, muſt blaſt us in the opinion of Europe as the moſt puſillanimous nation that ever exiſted!—a treaty which, in all its hardened features, betrays inſult and contempt!—a treaty, not only thus made odious, but which abridges, in every reſpect, our rights, and which ſports with our juſt claims and intereſts!—we demand, that when ſuch glaring, ruinous conduct *appears*, is *permitted*, is *ſanctioned*! have not the people juſt grounds of complaint—would not ſilence be criminal?

Therefore reſolved, That when a public meaſure dares not be arraigned, “*becauſe it is the offspring of the higheſt public character*”—then liberty lies proſtrate—then deſpotiſm begins!—and heartily adopting the ſentiments of our fellow-citizens of Camden, (*at the ſame time reprobating denunciations againſt orderly aſſociations*) with them we do inſiſt, that it is both the duty and right of freemen, on all great, public occaſions, in which the honor and welfare of the republic is

concerned, to come forward and declare their sentiments with freedom and firmness—that those who are entrusted with power, may be admonished to use that power *only* for the good of the people, who placed it, for that *especial* purpose, in their hands; and to teach them to be cautious how they violate the precious, the sacred trust.

Resolved, That on the appointment of John Jay as an *extraordinary* ambassador to Britain, we were *led to believe* that our rights would have been vindicated with firmness, a reparation of our wrongs obtained!—on the contrary, *even after the signing of a treaty of amity*, our flag is the *common sport* of Britain, and our sailor fellow-citizens and property at their mercy.

Resolved, That we were induced by *profession* to believe our administration sympathized in the cause of an ally wrestling for liberty—a great and regenerated people, who cherish in their utmost purity those sacred principles which have laid the foundation of *our freedom in the blood of our dearest citizens*!—but that ally has been treated with *insincerity*, *even at the moment our inveterate enemy*, and the *foe of human happiness*, has been invited to our bosom! and when *British tyranny and baseness* can leave not a doubt, on a single unprejudiced mind, that we are about to give that nation a footing in law among us which will be converted to our ruin!

Resolved, That by the constitution of the United States, all treaties are to be made “*by and with the advice and consent of the senate*”—that is, no treaty shall be negotiated without the advice first taken, nor accepted without the *consent* of the senate.—But the senate, as such, were ignorant of the principle or basis of the treaty itself. We admit they were made acquainted with the appointment of Jay, but did not instruct him, nor were informed of his instructions. *He was instructed, or he was not!*—if he was! we will drop the curtain! if not, and acted of and from himself, we shall lament the want of a guillotine! For when was it ever conceived to be possible that America could entertain the absurd and dangerous idea of trusting any man, (but especially a Jay) to negotiate with *such* a government as Britain—without explicit instructions!—The obvious construction of the clause in the constitution, which makes the advice of the senate necessary, has been given by the President himself, when a treaty was proposed by France. Mr. Genet was empowered to propose a treaty “*on liberal principles, such as might strengthen the bonds of good-will which unite the two nations*,” but on making his proposal to the executive, he was informed “*that the participation in matters of treaty, given by the constitution to that branch of government,*

would necessarily delay any answer to his friendly proposition. the senate being then in recess, and not to meet again until the fall."—In the negotiation with Great-Britain, the senate was in session, and yet were they called on to advise? Did they give instructions? They did not! We allow this most interesting business was taken up in the senate by our patriotic citizen Butler—but, from a want of formality, he was opposed—and this important matter died away, because it was not *orderly*!—In the treaty also with the Creeks, the president required the advice of the senate *before* he began to treat, and actually laid the outlines of a treaty before them previous to the negotiation.

Resolved, That we consider it becoming in a high degree the duty of the house of representatives of the general government, to enquire into so bold an attack on the palladium of our rights—'tis impossible they can suffer so flagrant a breach in the constitution to pass unnoticed!—The president and senate will certainly endeavour to reconcile their conduct to the wounded feelings of their fellow-citizens.

Resolved, That so far as is depending on his *own* integrity and good wishes to the United States, we are still willing to behold in Washington *the same good and great man*! But is it not possible, at least respecting Jay's treaty, that he may have been wrongly advised?

Resolved, That it is highly probable our generous and brave ally, however well-disposed towards us, viewed, with some emotion of indignation, at the least, the *uncandid* manner in which their proposition for a treaty was *received* and *rejected* by our government; and now find themselves under the necessity of calling on us to declare *honestly* and *openly*, our intentions towards them—*whether we will adopt the first supreme law of the land under the patronage of France or of England*? The period has at length arrived to know our ultimatum—the mask has been stripped off by mr. Jay—and the majority of twenty in the senate, we conjecture, will be cautious how far they pledge themselves to their constituents on the utility of an English treaty, provided France should show her disapprobation, or consider herself neglected.

Resolved, That admitting (what is insinuated by a member of congress for this state, the advocate and defender of British systems and British tyranny!) that the treaty proposed by France, *be* suspected, could not be obtained on eligible terms, but at the price of joining with her in the war—we do insist, that at the time alluded to, the honor, the interest of America ear-

nestly called on us, to enter heartily into measures opposed to the dreadful league formed against a generous and natural ally, whose welfare *should* and *must* be inseparable from our own ! The moment Britain openly declared against France, should have been our signal for action !---The united voice of the continent proclaimed the general, the generous sentiment !---*But the grateful feelings of a whole people were sunk in the timidity of its government !*

Resolved, That (reflecting on the present interesting moment, when an eventual war with Britain may be reasonably expected from a *further discussion* of mr. Jay's friendly treaty) we deprecate, with the strongest emotions of apprehension, a *difference between America and France* !---War with England, will be war with Spain ! Our government knows it ! Even the *neutrality* of France, under such circumstances, can be anticipated but with very unpleasant sensations.

Resolved, That we view with surprize the industry used not to disclose the articles of mr. Jay's treaty—*affecting and practising all the secrecy of monarchy, so opposite to open and republican principles*.—Will it, dare it be contended, that the people have no right to ask, nay, to *demand* information on the posture of their affairs ?—Secrecy robs them of this right, and makes *twenty* greater than the *whole*. Is this republicanism ?—Is this liberty ?—Monarchs and conclaves make a trade of secrecy—*it suits their designs*—but neither monarchs nor conclaves are, as yet, in unison with the sentiments, nor the wishes of the American people. There is no authorized secrecy in *our* government, and to infer such a right from the practices of other nations, is a prostitution of republican principles. The constitution of the United States gives to the president and senate the power of making treaties, but it communicates no ability to hatch those things in darkness. A treaty ! which is to be the supreme-law-of-the-land ! and yet the people not to be informed of the terms of this law until binding upon them ! until the opportunity for amendment is past !—Secrecy and mystery marked the conception, birth, and parentage of this lump of abortion and deformity.—The president received the treaty in January, when congress were sitting, and did not submit it to the senate till June !—when it was impossible any one legislature in the union could be in session to give the alarm !—The press alone had the glory of the discovery and reprobation of this horrid political monster !—It is also worthy of note, that on the 29th of said month (January) the president *approved* “an act of congress to establish an uniform rule of naturali-

zation," and that a few months afterwards the *senate* (*alone*) *approved* a treaty which renders said act null and void, in favour of "all settlers and traders (the rooted enemies of America) within the precincts or jurisdiction (a large extent of country) of the posts."—Should this treaty be ratified, 'twill be out of the power of congress to remedy its evils without hazarding a war—And it may with safety be presumed, that nine-tenths, at least, of the citizens of America, look with indignation and abhorrence on the inglorious attempt made by mr. Jay, and his advisers, to *chain* fifteen independent states as a *dangling appendage to the crown of Great-Britain!*

Resolved, That insurmountable objections lie against the treaty, were there no others, while the value of the negroes and other property carried away contrary to the seventh article of the treaty of 1783; and the loss and damage in blood and treasure sustained by the United States, from the detention of posts, remain unsatisfied for by the British government—the amount of which should have been ascertained by the commissioners to be appointed to liquidate the claims of British creditors, and set off against the principal of their debt; for, as to interest, during the war, they have not the shadow of a claim.—No man entertains a doubt, (even the British, not the governor of Canada himself, have been sufficiently hardy to deny it) that the Indians were excited to war against us,—and that the supplies for their warfare were derived from a trade *authorized by the British government, and protected by those posts which of right were our's, and ought to have been used for our defence*—This war has cost us, annually, calculating the loss of the fur trade depending on the posts, above one million three hundred thousand dollars, more than would have been sufficient for the defence of our frontiers if the posts had been in our possession. Let this sum, and the amount of their piratical depredations, the whole continent says, be made a set-off with British claims.

Resolved, That by the article regulating the West-India trade, nothing can be more evident than that Britain meditated to wrest from America the carrying-trade, an immense share of which she has lately possessed, as appears by the astonishing increase of our seamen and shipping; but we trust 'twill never be forgotten that the protection of a free carrying-trade was one of the primary objects for which the federal government was established.—Let not, then, our national government have the discredit of doing any thing by which the limits of our navigation may be fettered.—Let us not concur with the British ministry, in eminently promoting the British commerce at the

expense of our own!—Not satisfied with innumerable depredations on our shipping, the British government wants their total destruction by this insidious article, confining our vessels to seventy tons, mere boats, whilst they reserve to themselves the right of navigating in any size vessels they please, in the same pursuit of trade. By this deceptive article, we *alone* granted—have been prevented from exporting in our own bottoms any articles of West-India produce, and *even of cotton*, an article of our own growth, and becoming a very important one in this and the sister state of Georgia (even in our own district)—while the vessels of *Britain*, and *every other nation*, would be at liberty to export from American ports every article of West-India, and some of our own produce, to all parts of the world.

Resolved, That the adopters and warm advocates for this treaty must have regarded a favourite policy, a close connection with Britain and British systems, more than pecuniary benefit or national dignity; for, setting aside all reciprocity, no one advantage can we gain by any regulation in the treaty, distinct from a much greater to be obtained by the British nation.

Resolved, That the article restricting the subjects or citizens of either party from accepting commissions in the army or navy of any foreign power, is a gross violation of the natural rights of man—and, as such, should have been indignantly spurned at!

Resolved, That we join heartily in sentiment with that truly patriotic and staunch republican, the chief justice Rutledge, that mr. Jay should have demanded an unconditional relinquishment of the Western Posts *as a right*, until which had been granted, and until the British minister had given orders to that effect, mr. Jay should not have opened his lips about a treaty! What amity could be expected from a government, at the instant of negotiation, forcing the tomahawk and scalping-knife into the hands of savages, to the destruction of great numbers of our immediate frontier fellow-citizens! It was, truly, prostituting the dearest rights of freemen, and laying them prostrate at the feet of royalty. In 1793, the executive pressed the demand of the Western Posts, with a spirit becoming the representative of a nation of freemen, an ultimatum was required on the subject, by December of that year, and how were we treated? With a contemptuous silence, and fresh injuries heaped upon us, depredations on our property, as unwarrantable as the robberies of an Algerine, or the plundering of a savage! And, were it possible to sully the name of the British government with an additional shade of infamy, the same would be afforded by the

circumstance of their treatment to this country, *involving in it the black design of starving a people, whose only crime has been the defence of freedom.* Such treatment, it was natural to imagine; would have roused us to retaliate; and the *immediate* representatives of the people, according with the sentiments of their constituents, made an attempt to extort redress by means of a provisional retaliation. But, in *one* instance, the senate, in *another* the supreme executive, *checked them* in their honorable career; and the *energetic* portion of the government, with *unparalleled weakness*, *humblly sued* for the friendship of a nation which ever treated us as foes; rejecting, at the same time, (*the better to secure her smiles*) the proffered amity of another nation, to which, in a great measure, we owe our existence, as a free people, and which has also other strong claims to our gratitude and friendship!

Resolved, With that tried veteran and patriot, the venerable Gadsden, That we consider all connections by treaties with Great-Britain, equally impolitic and dangerous. Dangerous, because (whilst her government is monarchical and unregenerated) we shall insensibly give her such a footing among us, and consequently so great an ascendancy over our councils and government, as may eventually sap our independence, and subvert our constitution! And impolitic, because 'tis our interest, by the utmost individual and national exertions, (particularly our southern states) to arrive at an independent transportation of our commodities—to become the carriers of their own produce, for, 'tis an alarming fact, established on the best authority, that by the almost constant wars in which Britain is engaged (she having had in the last one hundred years, forty-two of war, and fifty-seven years and nine months of peace, which is three of war to every four of peace) and that by being so largely the exporters of our produce, she carrying two-fifths of the whole exports of the United States, the difference of freight, insurance and charges, amounts, on an average of peace and war, to one million, three hundred and ninety-two thousand, eight hundred and fifty-seven dollars, taxed annually on our agriculture by British wars, during their continuance, and our dependence on British bottoms, and so much more than we should pay did we but raise our own shipping to be competent to the carriage of all our own productions, and that, beside this, many of our bulky articles, not bearing a war freight, cannot be exported. While Britain, then, is the carrier of two-fifths of our produce, our independence is incomplete, and ever will be, if we tamely suffer such negociators as mr. Jay, to form treat-

ties with that nation, calculated to keep up a servile and ruinous dependence, by the immoderate, the excessive use of her manufactures. Let us wear nothing but what is American—eat nothing, drink nothing but what is American—this would soon raise the head of America. Let the people of Britain be driven to poverty and despair *by acts of their own government!* and what would be the consequence? An acquisition of tens of thousands of really useful citizens to the United States, which form the *natural asylum* to the people of the old world, to snatch them from a wretched existence, from slavery—to the enjoyment of plenty, happiness—to liberty!

Resolved, That we ever considered the appointment of John Jay, as *extraordinary* as it was unconstitutional: extraordinary, because underrating the abilities of our then ambassador: a man, *in every respect*, justly possessing the confidence of the union—especially, as there is good ground for asserting, that major Pinckney's energetic and firm representation had insured the immediate cession of our Western Posts—and a treaty, at least as favorable as any nation could have expected from England.

Resolved, That roused at length into a sense of our danger, we pronounce for war, with all its horrors, rather than see our country approve of measures which will effect her annihilation. A treaty! to be bought at the expense of infamy! purchased at the loss of the affection of an ally, as generous in friendship as glorious in arms! No! magnanimous nation! truly worthy of liberty! we will *cherish*, we will *respect* thy *opinion!* we will not suffer thy esteem to be taken from us! we will prove to the world, and, above all, to the English government, that we will not be the dupes of their insidious policy—their craft—their ambition!—Oh, ye Jays of America, who boast of wisdom so exalted, penetration so profound—how is it possible you have not yet lifted up the veil which hides from your eyes the low sinister politics of the English government! How is it ye do not see to what a degree it abuses ye! and what a trick it has put upon the “*solemnity*” of your *solemn* ambassador!

Resolved, That the much-esteemed names of Langdon, of New-Hampshire; Robinson, of Vermont; Burr, of New-York; Brown, of Kentucke; Mason and Tazewell, of Virginia; Bloodworth and Martin, of North-Carolina; Butler, our fellow-citizen, of South-Carolina; and Jackson, of Georgia—the patriotic senators—be held in our highest veneration and most marked esteem.

Resolved, That the public report, not contradicted, fixes on

Jacob Read, *our unworthy senator*—corrupt motives for his acquiescence in a treaty which would have made his country infamous!—would have restored her back to Britain! We therefore do not hesitate to declare him, (with his nineteen quondam coadjutors) undeserving of any further public confidence: And, guided by an opinion founded in a knowledge of human nature, we do insist, that if not lost to all the fine feelings of the heart, 'twill be impossible they can withstand that immense torrent of opprobrium which will rush upon them; they must resign! they cannot, in future, transact any public business!

Resolved, That as the power of finally making and ratifying treaties by the president and two-thirds of the senate alone, has, in the present case, been proved to be of a most alarmingly dangerous nature; that our very existence as a free people, had been put at stake; that had not a good providence influenced even the *twenty* of the senate to reject *one* article, which, *from necessity*, must arrest the hand of the president from signing it, we say, that had not the providential care, which we have so often experienced, interposed, we had been a lost, an undone people, without pity, and without friends!

Therefore, Resolved, That our members be earnestly called on, at the next meeting of the assembly, to propose an amendment to the federal constitution, so far as respects the power of making treaties. That a president, and twenty senators, perhaps fourteen (for that number makes a quorum) shall have the sole power of making treaties, which must be, necessarily, the supreme law; must be binding on every individual, which swallow up the sovereignty and independence of each state! No! the people now see the folly of giving such a power into the hands of fourteen men, which, at all times, may supercede every existing law in the union! 'tis too much! Without a disposition to judge uncharitably of men, we say 'tis possible that twenty or fourteen men may be tempted, may be bribed to betray the precious trust reposed in them by their fellow-citizens! And we repeat, that as it is notorious Britain carries all her points by corruption, (look in lord North's estimate during the American war; you will there find one million for contingents or secret service! Has not France, throughout her struggle, complained she felt British corruption in her very vitals! and shall America expect to escape her baneful influence!) then 'tis *possible* that twenty or fourteen men may be led to sell even their country! We, therefore, again urge it on our representatives, to bring forward an amendment, by which *congress at large, and congress alone*, shall have the power of

forming treaties, at least of *ratifying* them. We venture to pronounce the people will not be satisfied short of this : from one extreme of the continent to the other, this will be the universal language. We know, in framing the federal constitution, the objection to giving the house of representatives this power, jointly with the senate and president, was, *that negotiations generally required the greatest secrecy, and that was not to be expected from so large a body.* Curse on such secrecy ! it has undone our country ! An American assembly, aloof from the combinations of Europe, should have no secrets ! No government in the known world, like our's, ever gave such an extensive latitude as we allow to the president and senate ; even the most arbitrary kings never possessed any thing like it ! In France, under the old government, appearances at least, were kept up ; the king's edicts were never of force until registered in parliament. In England they proceed with diffidence in making treaties—far from being considered as legal without a parliamentary sanction, the preamble always states that “ *his majesty would endeavour to obtain a law for ratifying the treaty.*” Such is the language and conduct of monarchs, and what is our's ? we blush ! we blush !

Resolved, That while we stigmatize the man, and execrate his conduct, (John Jay) we rejoice he has been made an instrument to draw forth the whole united voice of the people of America in detestation of his treaty ! We congratulate each other, that from this truly marked circumstance, our great, our generous ally, will form proper, a true judgment of the disposition of the United States ! that she will distinguish between the people and a part of its government ! that they will see our hearts never ceased to beat in unison with their's !—of all possible temporal evils which could ever fall upon us, we deprecate a difference with France !

Resolved, That we pledge ourselves to our brethren of the republican societies throughout the union, as far as the ability and individual influence of a most numerous society can be made to extend, that we will promote every constitutional means to bring John Jay to a trial, and to justice. He shall not escape, if guilty, that punishment, which at once will wipe off the temporary stain laid on us, and be a warning to traitors, hereafter, how they sport with the interest and feelings of their fellow-citizens !

Resolved, That every compliment is due to the watchful zeal of our fellow-citizens of Charleston ; to the great ability shown by their committee in their elucidation of the treaty.

We warmly embrace and adopt their report: it demonstrates great moderation; but, with such provocation! we would not have been quite so tender!

Resolved, That we heartily approbate the representation of our wrongs made by our own district (Washington) it proves that we are neither defective in knowledge, nor deficient in duty; that we know our interest as citizens, that we feel a tender concern for the whole commonwealth of America: this we will teach as the first of principles to our children; we will endeavor to impress on them the nonsense and folly of involving themselves with the people of Europe, eternally cutting each other's throats; we will urge to posterity, that America need only lie still; that let her markets be but well supplied, all Europe will be the buyers; that they cannot do without us; to have no connection with the old governments by treaties, no written agreements; for the omission of a comma may involve us in a war! In this happy, but envied situation, had a gracious providence placed us; and, guided by these principles, we should have had no wars. But, the demon of discord entered into a Jay, and he flew to England to blast our rising hopes, *to involve us with compacts and treaties!*

Resolved, That in the investigation of this business, not to have discovered warmth—a warmth resulting from the glowing picture of danger which our country exhibits, by a tame submission in its government, to the most flagrant and daring outrages! would have betrayed a stoicism unworthy of the subject, unworthy of the sons of 1776! And should it be considered that unnecessary asperity has discovered itself to a nation, of whom we ought and must be jealous while the crown is upon its present head, we wish to make known to the world, and to Britain and Ireland in particular, that we discriminate between the honest and the slavish parts of their people; between the two nations and their governments! Yes, congenial and generous souls! we know you always longingly anticipated our welfare and rank among nations, and ever participated in our distresses, and in our happiness. No! 'tis your government that we hold in abhorrence!—a government, with one *exception*, singularized from all the nations of the world by the number and extravagance! by the foulness and blackness of its crimes!

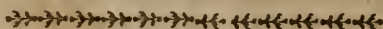
Resolved, finally, That the vice-moderator, the corresponding secretary, and secretary of the society, do sign the foregoing resolutions; and that they be generally printed, as expressive of our abhorrence and detestation of a treaty, which gives to the Eng-

lish government more power over us as states, than it ever claimed over us as colonies, and which, if Britain had been left to her generosity, *she would have been ashamed to propose!*--- a treaty, involving in it pusillanimity, stupidity, ingratitude, and treachery! to blast the rising grandeur of our common country, of our infant empire!

SAMUEL LOFTON, sen. Vice-moderator.

J. MILLER, Corresponding Secretary.

Ed. TATE McCLURE, Secretary of the Society.



Some observations on a letter said to be written by a gentleman of character and information in Vermont, and bearing date the 18th July last.*

I Will not venture to ascertain what was the real view of the letter writer; he is, at all events, very wroth with the citizens of great cities, principally, as it appears to me, because he suspects they will dare to intermeddle in politics, without obtaining his permission, or at least without being on his side. It is impossible, however, to avoid observing,

* FROM THE MINERVA.

The following is an authentic extract of a letter from a gentleman of character and information in Vermont; for the truth of which we pledge ourselves. It comes from a man of seventy-six, and is dated July 18, 1795.

"The treaty of peace has now become a general subject of conversation; but is not as yet enough known to form the public mind. It is impossible for the madmen in politics to communicate their madness to the substantial and numerous body of country farmers. They do not reverence the customs, manners, or violent party, inflammatory writings of your zealous political fanatics. And while those kind of writers please themselves with the conceit that they are enlightening the age and the world, they have no idea in what contempt their productions are viewed in the country. In sentiment and information, they are below the understanding of every country farmer; and the declamatory, violent stile sinks them still lower, in rural estimation. We are apprehensive that some of the large cities will endeavour to set their mobs in motion, with a view to dictate to the president and senate. Be assured we will reject the federal union, before we will be governed in the country, by the mobs of Philadelphia, New-York, or Boston. Moderation, in such a case, would be an error;—and the moment your mobs are set agoing, you establish a distinction between town and country, which you will not easily get rid of. The greatest and worst of all political events that the country would suffer, would be to have the government of it, under the direction of such tumultuous, outrageous, lawless assemblies.

"The above is to carry to you some idea of the horror we entertain of a mob-government. Be so good as to remember the articles of business."

that without his knowing what had really happened in these cities, the obvious errors in the treaty are so conspicuous, and, in contradiction to his will, obtrude themselves so forcibly on his brain, as to compel on his mind a suspicion, that mobs will be raised, while his wish appears clearly to be, that no opposition should be made against its obtaining the president's signature; should even its commercial errors be ruinous to the trade, and its political errors destructive to the liberties and peace of this country.

I know the people of Vermont well—they are quite good citizens; but they are likewise firm and inflexible patriots.

They know the value of their rights, and they will, if necessary, maintain them at every risk.

I will first, therefore, make a few observations on such parts of this extraordinary instrument, as appears to me most evidently wrong, and most pointedly demonstrative, that either the head or the heart of the man who framed it, was ill calculated for executing the high trust reposed in him.

And secondly, assign some reasons why the people of Vermont, as well as of other parts of this extended country, will pursue every constitutional method in their power, to prevent its becoming the supreme law of the land.

The second article is, in my opinion, an indelible stain upon the honour and dignity of the nation; for, by agreeing that the posts shall not be delivered up till the first of June 1796, without any stronger obligation on the part of the British for the surrender of them at that period, than we had at the treaty of peace, it is tacitly agreed, that the unjust retention of them was no infraction of that treaty.

Where was that genius of America, which governed its councils at the termination of the war? who, in a firm and manly tone, told this haughty and imperious government of Great-Britain, that, “we will not speak on the subject of peace till you have first acknowledged our independence.”

Or are our present claims to these posts, after being absolutely ceded to us by a former treaty, made with that very government, less valid or less conclusive, than a claim to that independence which we then, in such unqualified terms, declared, should actually form the basis of the treaty? No, but our *then* ministers were different men, and had very different views from what *some* of them have at present.

If the third article is construed *literally*, it certainly does not provide for a *free* trade between Vermont and Canada, by the way of Lake Champlain. The words are, “but it is under-

stood that this article does not extend to the admission of vessels of the United States, into the sea-ports, harbours, bays or creeks of his majesty's said territories; nor into such parts of the rivers in his majesty's said territories, as are between the mouth thereof *and the highest port of entry from the sea*, except in small vessels, trading *bona fide* between Montreal and Quebec."

St. John's, at the bottom of Lake Champlain, is, strictly speaking, a British port of entry, where the American vessels, as well as all craft from Canada, for any part of that Lake, have entered and cleared out, ever since the peace; the Vermont trade, therefore, by this useful lake, must, on a rigorous construction of that article, stop at that port.

How far the people of that state may esteem themselves obliged to mr. Jay, for leaving so beneficial a branch of their trade, subject to such an indefinite, uncertain construction, I will not say.

The actual evil which may arise from the ninth article, depends in a great degree, upon the quantity of land now held by British subjects. If, as is said by many, they at this moment hold several millions of acres, the present proprietors may, either on their lease or sale thereof, to actual settlers, make it a condition, *that they shall remain British subjects*; in this case, a short time would probably discover the benefits which would accrue *from having one or two millions of British subjects actual settlers on our frontiers*, who, the treaty declares, "shall not, as far as may respect the said lands, and the legal remedies incident thereto, be regarded as aliens;" a due attention to the twenty-sixth article of the treaty, will possibly enable many good republicans to discover mr. Jay's real intentions; for even *in case of war*, though they shall remain British subjects, they cannot be compelled to quit the country as long "as they behave peaceably, and commit no offence against the laws." Many of us remember the distresses suffered by the patriots of this country last war, by only a few of such men being amongst us. It was best, perhaps, not to have these two articles of the treaty too near each other.

But I would ask "the gentleman of character and information in Vermont," by what part of the constitution of the United States, congress at large, *much less the senate and president*, have the power of declaring that *aliens* shall, *in any instance*, have a right to hold lands within any one state?

I am safe in averring, that each state has hitherto claimed the *exclusive* privilege of granting or prohibiting that right.

And the third section of the fourth article of the constitu-

tion, after granting to congress, "power to dispose of and make all needful rules and regulations respecting the territory or other property *belonging to the United States*," explicitly declares, that "nothing in this constitution shall be so construed as to prejudice any claims of the United States, *or of any particular state*."

Does the letter writer imagine, that the people of Vermont, because they are known to be truly federal, will tamely submit to see their state deprived of a privilege so important and extensive, and so pointedly guarded to them by the constitution of the United States, without ever remonstrating against it?

I wish to heavens that the letter writer was the only man in America, who would sacrifice the rights of *his state*, to the predominancy of *his party*.

The tenth article, which declares, that "neither the debts due from individuals of the one nation to the individuals of another, nor shares, nor monies which they may have in the public funds, or in the public or private banks, shall ever, in any event of war, or national differences, be sequestered or confiscated," carries, I readily acknowledge, the *appearance* of honor and honesty, on the very face of it; but unfortunately in making the distribution of the consequences of that stipulation, entered into between the contracting parties, all the benefits arising therefrom go to the side of the British only, and all the disadvantages to the side of this country; we having scarce any money in their funds, or any debts due by them to us; while they have immense sums under our controul, which ought to have been maintained in that situation, for the express purpose of being a preventative against such a predatory, disgraceful warfare, as they have waged against us, *with impunity*, for upwards of two years.

Far am I from thinking, that either a sequestration or confiscation ought to take place on any slight or frivolous occasion. May the honor and integrity of the United States become proverbial throughout the habitable world.

To explain myself by a homely, but I think, striking simile, I will suppose that our friend, mr.——, who is a man twice as strong as I am, had frequently met me in the highway, and had sometimes severely drubbed me, at other times, had thrown me in the mud, and ruined my clothes; that I had made frequent remonstrances against this ill treatment, but in vain, having, to all my mild remonstrances, and humiliating petitions, received from him, nothing but vindictive, and supercilious replies; that at last I loaded a pistol of his, which happen-

ed to be in my house, put it into my pocket, and threatened to blow his brains out the next time he ever attacked me on the highway; that I then sent a friend, on whose good sense and integrity I strongly relied, for the purpose of adopting some mode for terminating all our disputes.

That this friend, after having settled on terms in many respects very favourable to mr. ———, stipulated, in the most positive manner, that, though it was profitable and convenient for him still to leave his pistol with me, I should never attempt to use it in my own defence against him, even to save my own life, notwithstanding a future attack, on his part, should be equally violent, virulent, and unprovoked, as those which he had formerly made on me, my friend obtaining at the same time, a promise from mr. ———, equally obligatory on him, that he would never use against me, a little popgun, which my friend very well knew could not possibly injure me more than by taking a button off my coat.

In this state of the case, ought I to retain a good opinion of either my friend or of any other person who advised him to the measure? I hesitate not to answer that I never would place the least confidence in him again, but should ever look upon him, and them, with a jealous eye, as men, who, from some sinister and wicked motives, were meditating my destruction, especially as they were perfectly sensible, that both my interest and inclination would prevent me from ever beginning an attack upon him, or even from intentionally giving him offence.

The 17th article declares, that the goods of an enemy to Great-Britain, found on board any of our vessels, shall be made prize of.

This, it is admitted, is agreeable to the common law of nations, as that law formerly stood; for Vatel says, page 507, that “effects, belonging to an enemy, found on board a neutral ship, are seizable by the rights of war; but, by the law of nature, the master is to be paid his freight, and not to suffer by the seizure.”

Mr. Jay carefully adhered to the first part of this maxim. It is certainly very favourable to the British. The second part, which respects the payment of the freight, is neglected: it certainly would have been very favourable to the people of the United States.

But, when our worthy president issued his proclamation of neutrality, he predicated it upon the modern law of nations: an adherence to which would have prevented our minister

from entering into a positive stipulation for such an ignominious concession.

The twenty-third article of our treaty with France, the tenth with Holland, the seventh with Sweden, the twelfth with Prussia, and the third with the emperor of Morocco, all respectively stipulate, in the most express terms, that free ships shall make free goods, though these goods should belong to the enemy of either of those nations. Though I am not a merchant, common sense points out to me, on the first blush, the extensive advantages which must have accrued to our carrying-trade, by an adherence to the same plan in our present treaty with Great-Britain. Did the recollection of the innumerable favours which Great-Britain has heaped on us from the nineteenth April, 1775, to the very moment at which he signed the treaty, overwhelm our ambassador with neck-loads of gratitude, that he forgot that this article was diametrically opposite to our stipulation with every other nation with whom we had a treaty?

I do not mean, that our other treaties precluded him from the right of entering into this stipulation. I only wish to show, that, while France and other friendly nations had voluntarily granted to us this inestimable privilege in our very indigent days, our ambassador, though to the highest prejudice of that nation, meanly and cringingly ceded it to Great-Britain, in the height of our prosperity! Or did he imagine it would please his countrymen, to proclaim to the world, that, like true spaniels, they fawned most on those from whom they had the severest whippings?

I feel for the honor of my country, and pray to my God, that, though she is fallen, it may not be for ever.

But perhaps this part of the treaty, as well as several other parts, were entered into for the express purpose of distressing the French nation, and thereby occasioning a rupture between them and us. If this was really Mr. Jay's policy, I think it is far from being improbable, that we may soon reap the fruits of his labour, by fully experiencing the good or bad effects thereof.

The eighteenth article, regulating what is in future to be deemed contraband, is so superlatively humiliating and degrading to ourselves; so plainly and unequivocally levelled against the success of our ally, that even Camillus finds himself compelled to make a wayward apology for it.

Poor Camillus, thou wast then driven to thy last shift indeed, and heaven knows that thou art possessed of more of them

in the defence of a bad cause, than any man of thy country was ever before.

In this, as in the former article, our *extraordinary ambassador* has stipulated, that naval stores, &c. shall be deemed contraband, and liable to capture; though it will appear by the twenty-fourth article of our treaty with France, the twenty-fourth with Holland, the tenth with Sweden, the thirteenth with Prussia, and the third with the emperor of Morocco, that we have contracted, that they shall not be contraband. Nay, what, as far as is possible, adds to the disgrace of this part of the treaty, even Great-Britain herself, in her commercial treaty, with France, declares that they shall not be contraband.

What opinion our ally will entertain of our friendship for her—what opinion the world at large will entertain of our magnanimity, good faith, and gratitude as a nation, and in what degree of estimation our minister will be held by his fellow citizens at some future period, time only can fully unravel.

If even the extacy of joy, upon being permitted the honor of kissing the queen's hand, was so excessive, as to obliterate from his mind, that cotton was a branch of the produce of his country, it is scarcely possible to suppose, that the pleasure continued so extremely ravishing during the whole negotiation, as to make him forget that there were two such states as *Virginia* and *North-Carolina*, a great proportion of whose trade, by this shameful concession, he was sacrificing at the shrine of their bitterest enemy.

The twenty-first article defines what piracy is, and determines what the punishment thereof shall be, by saying, "that if any subject or citizen of the said parties respectively, shall accept any foreign commission or letters of marque, for arming any vessel to act as a privateer against the other party, and be taken by the other party, it is hereby declared to be lawful for the said party, to treat and punish the said subject or citizen, having such commission, or letters of marque, as a pirate."

The eighth section of the constitution of the United States, declares, that "congress shall have the power to *define and punish* piracies and felonies committed on the high seas, and offences against the law of nations."

The curse of oblivion seems to have pervaded our minister's brain in every part of this treaty, which did not embrace some point favourable to the British; for here again, he has forgot that the *house of representatives* are an absolute (though in his opinion, probably a very trifling) part of congress; and as they were not to be consulted about the propriety or impropriety of

this treaty, he ought to have seen that he was entering into an agreement which the senate could not approve of, nor the president ratify, without a palpable breach of the constitution.

But for argument's sake, I will for a moment suppose it constitutional, and I will likewise acknowledge, that by the twenty-first article of our treaty with France, the nineteenth with Holland, and the twenty-third with Sweden, the same crime was by our then congress (*not by a part of it*) deemed a piracy; but must, at the same time, insist, that the manner of punishment is described in a very different way. In each of these treaties the words are these, "and if any person of either nation shall take such commissions or letters of marque, *he shall be punished as a pirate.*"

In our treaties with Prussia and the emperor of Morocco, it is stipulated, that "subjects, nor citizens of either party, shall take commissions from any power with whom either of the contracting parties may be at war;" but no punishment whatever is affixed to the breach of that article.

By our treaty, then, on this head, with the first three nations above mentioned, the offender against the article was, I conceive, upon complaint made, or information lodged, to be tried, as the constitution directs, by a jury of his countrymen conspicuous for their moderation, lenity and justice; and, if strong extenuating circumstances appeared in his favour, should even the jury esteem themselves obliged to condemn him, agreeable to the letter of the law, they might, nevertheless, forcibly recommend him to that branch of the government, in whose hands the pleasing power of showing mercy is so wisely placed.

As no punishment is annexed to the crime by our treaty with the other two powers, the offender must have been tried upon common principles.

Mr. Jay has the honour of being the first American minister, who ever had the courage by public act, to declare, in express terms, that his fellow-citizens are liable to be condemned as pirates, by a British court of admiralty, for an act of which the law of nations renders even the criminality doubtful.

What does he really say on this head of the treaty? Exercising his most inventive talents to enrage his fellow-citizens to some improper unconstitutional act, he virtually tells them, I see that you still remain equally attached to, equally enamoured with the principles of liberty, as you did when I was a *pacific* bellower in that cause, and therefore, that your attachment to the French nation, in her present contest, may lead some

of you to engage as volunteers in her service, depending upon that principle in the laws of nations, declared by Vatel, page 594, in the following words, "volunteers taken by the enemy are treated as if part of the army in which they fight." Nothing can be more reasonable. They, in fact, unite themselves to this army. They support the same cause, no matter whether it be from obligation or free will.

But, continues Mr. Jay, I will risk deviating materially from the words of every treaty hitherto entered into by the United States, should my act even be an unconstitutional one, and declare that, if fighting in this cause you are taken by the English, it shall be in their power to hang you as pirates.

Gracious God! ye heroes who were the glorious copartners of the brave little French army at the siege of York-Town, and shared with them the honor of fighting, bleeding and conquering in the cause of freedom! can you believe, that your old commander in chief will ever give his sanction to such an act as this? The question, I acknowledge, is unnecessary; for (the few who wish to embroil us with that nation excepted) you will universally exclaim—he never—never will do it.

Permit me only to add, that it is an insult even to ask him..

Nº. II.

I WILL now beg leave to recapitulate the parts of this treaty, which I have deemed reproachable: let my observations thereon speak for themselves.

1st. The surrender of the posts ought to have been made the basis of the treaty; instead of which they are to be held until the first of July, 1796.

2d. The third article, amongst other objections to it, is so worded, as to afford at least strong pretensions for preventing the people of *Vermont* from any inland trade with Canada, farther than St. John's at the bottom of the Lake Champlain.

3d. The ninth article allowing British subjects to hold lands, is not only unconstitutional, but, as by the 26th article, they may, *even in case of a war*, remain still as British subjects, provided *they behave peaceably*, we may have within our very bowels one or two millions of British subjects, whom we cannot, without a breach of faith, expel from this, during the time we are engaged in a war with their *country*.

4th. The tenth article yields up the only shield of protec-

tion we are possessed of against such a predatory war as Great-Britain has carried on against us for these two years past; while our minister (as shall hereafter be showed) has neglected to stipulate in return for many of these advantages granted to us in our other treaties.

5th. The seventeenth article shamefully surrenders to the wanton plunder of the British robber, the right of capturing the property of our ally when found in our vessels, though our treaty with every other nation, particularly with that very ally, for the purpose of softening the rigours of war, declares that "free ships shall make free goods."

Surely our minister might at least have permitted this part of the treaty to have stood on the existing principles of the law of nations, without sanctifying a British right in the plunder of our ally's property, and the destruction of a most beneficial part of our own trade.

6th. The eighteenth article, which permits naval stores, &c. to be deemed contraband, *though all our other treaties expressly stipulate that they shall NOT be deemed contraband*, meets with a much more severe chastisement, than it could possibly receive from any observation of mine, through the pen of the partial, and probably well-paid Camillus, who admits, "that it is the *most indefensible* part of the treaty."

7th. The twenty-first article, which substantially delivers to the fangs of a British tyrant, to be punished by him as a pirate, every citizen of the United States, whose heart, throbbing for an opportunity of discovering his love of freedom, may lead him to risque his life in the defence of "the rights of man," merits, and must meet with the execration of every man who loves this country, and the rational liberty hitherto enjoyed therein.

Having now pointed out, from the many, a few of the most glaring execptionable features of the treaty, the well-known children of our minister, by the actual sin of commission, I will next endeavour to exhibit some of those, which are equally distinguishable, but have arose from the sin of omission.

In the sixth article of the treaty, a circumspect care is taken "that full and complete compensation is to be made, to British merchants, and others his majesty's subjects, who had debts due from citizens of the United States, and who, by the operations of various lawful impediments since the peace, &c. have not received full and adequate compensation for their losses and damages." But how much greater have the losses and damages been to the United States by the detention of the posts! When we take into view all the consequences of

the Indian war and the loss of the fur trade, how are we surprized to find, that not a word is said about "a full and complete compensation" to be made on that account!

If, agreeable to mr. Jay's opinion, both parties have broke the treaty, is it reasonable, or just, that the one should be paid for the damages arising therefrom, and the other should not? especially as mr. Jefferson has proved the breach did not commence with us.

Our minister, too, had forgot to obtain payment for the negroes which Great-Britain promised, in the treaty of peace, should not be "carried away," and yet were carried away to the amount of many thousands!

The *British* Camillus, it is true, endeavours to show, that they ought not to be paid for; but I well remember to have seen in the journals of congress; a pointed motion of the *American* mr. Hamilton's (soon after the peace) remonstrating against their being carried away; and most men believe, that mr. Hamilton was then a man of equal good sense, and much more friendly to the interests of the United States, than Camillus is now.

As Great-Britain is admitted, by all parties, to be the greatest maritime nation in the world, it must likewise be admitted, that our minister should have been equally guarded in procuring for us, as far as he possibly could, the same favourable stipulations, in case of a rupture with her, or any other power, as we have entered into with other nations.

Mr. Jay's friends say, that he is a man of *firmness*; I am sure that, as an ambassador, he has proved himself a *consistent* man; for it will appear, that he has been equally negligent in this part of his duty as in others already pointed out.

By the sixth article of our treaty with France, the fifth with Holland, the twenty-second with Prussia, and the third separate article with Sweden, each of these powers respectively agree, in case of their having a common enemy with us, that they will take our vessels, whenever demanded, *and defend them in the same manner as they would their own.*

Has Great-Britain made any such provision?—No.

By the fourteenth article of our treaty with France, *goods belonging to us*, loaded on board *their* enemy's vessels, at any time previous to two months after the declaration of war, *if taken by them*, shall be restored to us; and by the fifth article of our treaty with Holland, and the fourteenth with Sweden, our goods taken by them in the same situation, shall be restored, provided they were loaded at any time previous to *six months* after the declaration of war, and the owner of the

goods did not know of the war being declared. Has Great-Britain made any such promise?—No.

The twenty-fourth article of our treaty with Prussia makes provision for the kind and hospitable treatment of prisoners, in a manner which does honor to human nature, and stands as an eulogium on that philanthropy of disposition, which has so conspicuously shined in all the acts of a *Franklin* and a *Jefferson*.

Is there any such stipulation with Great-Britain?—No.

Was it necessary?

Let the history of the *sugar-house at New-York* and *Jersey prison ship*, during the last war, determine this question.

I will at the same time confess, that if mr. Jay is equally careful of the person of the *present governor* of this state, [New-York] as he was of his own at the time *Esopus* was burnt, by the marauding army of his favourite nation, there is no risk that his excellency will suffer from this neglect, as he will not become a prisoner till the British reach the mountains of Kent. A desire to obey his excellency's orders will produce an explanation of this, whenever he is pleased to require it.

I am aware, that it will be observed, that as there were two parties to the treaty, it was impossible for mr. Jay to obtain all he wished—Granted—But, does it follow from thence, that in the humiliating manner he has done, we were to yield up to the ambitious and supercilious arrogance of the other party, whatever she, in the *agonizing frenzy of departing greatness*, might think proper to require.

What opinion must the other nations entertain of either our honor or independence, whose treaties with us are demonstrated to be so much more in our favor, than the one mr. Jay has thought proper to submit to?

We boast of our increase in wealth, in numbers, in respectability as a nation, all arising from the good management of the political machine, by those who have the present direction thereof: and yet this treaty must give the lie direct to that assertion in the opinion of every man, not intimately acquainted with our true situation; because it abjectly crouches beneath the galling yoke of Great-Britain, and servilely grants to her what no other nation, in the hour of our greatest distress, before we had even thrown off our swaddling bands, ever attempted to demand of us.

I will quit this first part of my promise, and proceed to my second, by showing some reasons, why the people in *Vermont*, as well as in other parts of this extended country, will pursue

every legal method in their power, to prevent its becoming the supreme law of the land.

It is well known, that there has been, for many years, throughout the yeomanry of this country, a settled spirit of enmity against the British government, arising, amongst other causes, from the remembrance of their savage and active cruelties, during the last war, the hatred displayed to us during the peace, and their unparalleled depredations on our trade, since the commencement of their war with France.

And as this treaty entitles the people of that nation to rights and liberties within each state, which cannot be constitutionally granted but by the state itself; that part of the yeomanry who wish not to see the constitution infringed on, or the power of their respective states fritter'd down to that of small corporations, will universally oppose it.

It is intended to disunite us from our ally, to whom the yeomanry of this country get every day more and more attached; and they will therefore oppose it.

It subjects them to unconstitutional punishment, for espousing the cause of freedom, by granting their assistance to this very ally; and they will therefore oppose it.

It was formed in contradiction to the expressed wishes of their *immediate* representatives in congress; and they will therefore oppose it.

They will reflect, that the British West-Indies are dependant on us for their very existence, as is fully demonstrated by the frequent petitions of their inhabitants to the British parliament—That *we* consume upwards of *two-fifths* of all the manufactures exported from Great-Britain—that the balance of trade with us is about twelve millions of dollars yearly in her favor—That had she compelled us to war, our privateers would have distressed her trade in a degree exceeding the bounds of calculation; of which opinion, the number of British prizes brought into our ports last war, affords undeniable proof—and that in a very short time she must have lost all her possessions on the continent of North-America—That, under these considerations, a wise, a firm, an honest minister could not have failed in procuring us terms *at least reciprocally beneficial*. And therefore, they will oppose this heterogenous treaty, begot in the dark, and ushered forth to public view, against the express will of its legitimate parents, who, conscious of its deformity, wished to conceal it from the penetrating eye of their countrymen as long as possible.

But it will be objected, that twenty senators having given

their sanction to its adoption, is *prima facie* evidence that it must be a most excellent treaty—Granted.

And it will be answered, that ten senators being warmly opposed to it, and every *tory* in the country extolling it as the greatest proof that heaven ever furnished, of its watchful attention over the honor, liberty, peace, prosperity, welfare, and independence of the United States, is likewise *prima facie* evidence that it is a most d—n—able treaty. And the sensible yeomanry of this country, after subtracting the one evidence from the other, and finding the balance greatly against the treaty, will therefore more firmly oppose it.

Many other arguments might be produced; but I shall stop here, and assign some additional reasons, why I am of opinion, that the yeomanry of *Vermont* will, in a particular manner, oppose it.

Their connection with Canada has given them frequent opportunities of viewing the supercilious, haughty deportment of many of the British officers, to whom the etiquette of that government led them to make application; and they have observed their deep-rooted contempt of republicanism and republican manners. They will, therefore, oppose an intimacy of national connection.

That state has been superior to most, and inferior to none, in point of *federalism*; and they will, therefore, be delicately careful in preventing their darling constitution from being, in the smallest degree, impaired or infringed on.

The citizens of that state, even their professional men of all descriptions, are (speaking generally) warm admirers of the French cause, though they do not attempt to justify all their actions: and as many of the leading features of this treaty have a strong tendency to distress that cause, they will oppose it with an energy, proportionate to their love of rational liberty, and of the rights of man.

But taking for granted, what the editor of the *Minerva* asserts, that the unknown letter-writer in Vermont, is, “A gentleman of character and information,” I will oppose his sentiments by those of another citizen of that state, known by his writings and his pleadings to be *really* “a gentleman of character and information.”—I mean judge Chipman, who, in the year 1793, previous to this bustle about French and English politics, wrote “sketches on the principles of government,” in which he exhibits maxims, perfectly consonant with those maintained by the present opposers to the treaty, and equally repugnant to those displayed by the learned

letter writer, whose principal aim, as far as he chooses to explain himself, appears to be a strong desire of proving, that it is improper for the people to investigate the treaty, but to trust to the well-known abilities and integrity of the constituted authorities—and in attempting this, his language is extremely indecorous, and even indecent; indeed, he seems to have borrowed much of his stile from the editor of the *Minerva*.

The letter-writer says, in great heat, “we are apprehensive that some of the large cities will endeavour to set their mobs in motion, with a view to dictate to the president and senate. Be assured we will reject the federal government, before we will be governed in the country by the mobs of Philadelphia, New-York, or Boston.”

And does it comport with thy opinion of the people of these cities, mr. letter writer, that they cannot meet quietly and form resolutions on a subject, not only of the utmost importance to themselves, but their posterity, without becoming rioters? Has your vanity, on being permitted to correspond *with the editor of the Minerva*, so misled your understanding, as to make you suppose the citizens of Vermont could be so far duped as to believe, that a riotous mob, and a Boston town meeting, were synonymous terms?

Are you so extremely credulous, *my little lord pomposity*, as to imagine, that this, thy pigmy threat, “of separation from the federal government,” will intimidate the freemen of Vermont, from searching into the cause of the present agitation of the public mind, which has taken place from the one end of this extensive continent to the other, or that it will deter them from giving their opinion thereon, in a firm, manly and decent manner?

Or do you believe, *my little disappointed snipper-snapper*, that the additional yelping of a half a dozen more such whiffets as thyself, would meet the same attention and respect, as the solid, serious and patriotic advice given by your fellow-citizen, the judge?

Let us see then what he says:—

In page 77, he observes, “that when we find an infringement on the liberties of the people, *admitted in the administration, we ought not to excuse ourselves from searching the cause.*”

The same worthy patriot, in showing the advantages which arise from the dissemination of useful knowledge, in page 152, makes use of this remarkable expression: “let there be no restraint on the liberty of the press, *no check upon PUBLIC*

or private discussion, but what is imposed by the manners, morals, taste, and good sense of the age."

These two are the express sentiments of those who oppose the treaty;—but, possibly, *my little wild politician*, you will insist that the judge meant to confine "public discussion" to the country only; and yet I suspect, that it would bring a blush even into thy face, to be called on for a good argument to show cause why the citizens of great mercantile cities should be prevented from "discussing publicly," an instrument, christened under the title of treaty of commerce and navigation.

Our letter writer is for trusting every thing to the constituted authorities.

The worthy judge on the other hand, in page 159, makes an observation which we can have no reason to doubt is strongly impressed on the president's mind, in the present business—"In the making of laws, a great regard must be had to the circumstances, manners, and *sentiments* of the people, as well as to the principles of the constitution—the laws must be the best which the people can bear."

To suppose, therefore, after admitting this principle, that the president would ratify the present treaty, in contradiction to the sentiments of so respectable and so decided a majority of the people, is supposing that he would gratify his own inclination, at the hazard of commotions, which would not only be extremely dangerous to the community, but would probably be attended with his own political destruction. And, how could the president have known, that the people were so universally opposed to this treaty, provided, as our letter writer seems to wish, they had been perfectly silent on the subject.

Was this treaty to be ratified, I am well convinced that the citizens of Vermont would almost universally oppose it, from a hearty concurrence with their worthy judge, in the following sentiment, for they cannot be ignorant, that this treaty is in direct opposition to the expressed will of the house of representatives, who wished to obtain justice from Great-Britain, not by the fawning flattery and cringing submission of a groveling, prostituted mind, but by that calm, deliberate, but stern firmness, in support of our natural rights, necessary for maintaining that respect and attention which our situation, our growing greatness, and the extensive advantages of our trade and commerce gave us a right to claim from the nations of the world. Was, then, the president to give his sanction to this treaty, we should have the senate in favour of, and the house

of representatives, *our best guardians*, opposed to, the instrument, which (if it is not unconstitutional) would become *the supreme law of the land*.

The citizens of Vermont, in that case, would draw many of their arguments from the pure republican fountain which the judge has laid open to them, in page 140, where he says, "Public discussion, and mature deliberation, in the making of laws, are indispensibly necessary.—The senate and house of representatives should have equal powers. *No law should pass without the concurrence of both.*"

Are we to suppose, then, that the president will join the senate in sanctioning a law, supposing it even constitutional, which he knows to be repugnant to the wishes of the house of representatives, and nine-tenths of the people? Cursed be he who entertains such an opinion of him. Such an act would not be an error, it would be a crime.

I may, however, be possibly asked—Should the president think himself justifiable in ratifying the treaty, ought not the people to rest contented, and view it as the supreme law of the land? I hesitate not to answer, *They ought not.*

It will then be their duty to convoke town-meetings, and petition their *immediate* representatives in congress to declare, whether the privileges of that house have not been grossly infringed on? Whether, in certain parts of that treaty, the senate have not exceeded their constitutional powers?

For I perfectly agree with the learned judge, whom I have so often quoted, in his opinion, page 117, "That the government, that is, those organized bodies who are entrusted with the powers of government, *are bound by the constitution, but have no power in themselves, to make, alter or controul any of its laws.*"

And it appears to me very clear, that the power granted to the president, by and with the advice and consent of two-thirds of the senate present, *to make treaties*, could never, by the framers of the constitution, have been intended to controul those important and extensive rights, entrusted to congress at large, in two precedent clauses of that same constitution, viz. "The powers of regulating commerce with foreign nations," and "of defining and punishing piracies," which powers are granted in the most express terms, and not, therefore, to yield to mere implication, especially when the admission of that implication would be contradictory to the genius of the whole constitution.

Is it possible to suppose, that it was intended, to authorize eleven members of the senate, with the president, legally to re-

gulate the commerce of such an extensive mercantile country as this, and that their regulation was to be binding on the people, without a possibility of constitutional redress, however disagreeable it might be to them, to the majority of the senate, and to the whole house of representatives? And yet this might happen, if the power of making treaties embraces all the objects our present treaty makers wish. For the power is granted to the president, and two-thirds of the senators *present*. As the senate consists of only thirty members, and as it is provided by the constitution, that a majority of them shall form a quorum, it is in the power of sixteen members to conclude a treaty; and as eleven members make more than two-thirds of those sixteen, they, with the president, would fully be empowered, by the constitution, to have formed the present pending treaty, momentous as it is, in contradiction to the wishes, *informally* declared, though in the most decided terms, of nineteen senators, the whole house of representatives, and the whole of the people.

I again ask, is it possible our constitution could have intended to clothe any twelve men with such immense, such uncontrollable, such irrevocable powers?

But I hear some people say—Should the president ratify this treaty, and should the house of representatives, regardless of the petition of the people, permit it to rest on its present footing, unnoticed by them, what are the people to do in that case?

It must be acknowledged, that, in such a case, we should be placed, not only in a difficult, but a very dismal situation: It would be the crisis for determining, whether the term, *majesty of the people*, was, like the children's rattle, used merely to keep them from murmuring and complaining; or whether, in this land of liberty, it had an absolute and real existence, calculated for much more important purposes.

But it is improper even to suppose, what there is so little probability of ever experiencing; for I again repeat, that the president never will give his sanction to an irrevocable act, which he has the most convincing proofs of the great body of his fellow citizens viewing with hatred, horror, and contempt.

I shall conclude with calling heaven to witness, that no man more fervently wishes than I do, to see the citizens of the United States unanimous in their obedience to the laws of the land, as long as those laws are founded on the immutable principles of justice, good faith, and national honor.

American Appeals.

The following important case of the Brigantine Betsey, W. Furlong, master, was heard and determined in London, by the lords commissioners of appeals, on the twenty-fifth July, 1795.

FROM the ship's papers and depositions of the captain and crew, produced in evidence on this cause, it appears that the brigantine Betsey, belonging wholly to Mr. George Patterson, of Baltimore, cleared out from that port on the nineteenth December, 1793, for the island of St. Bartholomew's and a market. That in quest of a market she went directly to Guadaloupe, where she arrived on the eighth of January following. Here she discharged her cargo of provisions, and took in one of West-India produce. With this cargo she was proceeding to Baltimore, when she was met, and captured by the privateer sloop of war, Agenoria, Willis Morgan, commander, and taken in to Bermuda.

Her cargo consisted of sugar, coffee, and other goods, belonging, in certain specified proportions, to the captain William Furlong, and to Messrs. George and William Patterson.

On the fourth of April, 1794, proceedings on behalf of the captors were commenced. On the twenty-third of April following, the vessel was claimed by Captain Furlong, on behalf of Mr. George Patterson, and the cargo on behalf of himself, a citizen of the United States, and of Messrs. George and William Patterson, both also lawful citizens of the United States, and who had been for many years before resident in Baltimore, in the state of Maryland, where their families and houses of trade were. Mr. George Patterson has been alleged to be a native of Ireland—there is some doubt as to this fact—it is not contended, however, but that he was actually a citizen of the United States. It appears that he went over to Guadaloupe for a special purpose, as the agent of his brother, and not with the view of residing there—on the contrary, that he proposed returning without delay to Baltimore, as his place of residence.

On the twenty-first of May, 1794, the cause was brought on for a hearing, before John Green, Esq. judge of the vice admiralty court of Bermuda; and on the twenty-third of said month, the vessel with her "boat, tackle, apparel and furniture, and all and singular her cargo and lading, were adjudged and condemned as lawful prize to the captors by the said judge:

and the claimant, captain Furlong, ordered and directed to pay the taxed costs of suit."

The true ground of judge Green's decree appears to have been, according to his own words, because "she had come immediately from a French port, declared by authority to have been blockaded by his Britannic majesty's fleets and armies." It seems the "authority" that "declared" the French islands in a state of blockade, was admiral sir J. Jervis; and the evidence of this act before the court was a copy of a letter from this officer, to Thomas Griffith, esq. of Barbadoes, of which the following is an exact transcript:

"Boyne, in Fort-Royal Bay, Martinico, 18th March, 1794.

S I R,

THE several French West-India islands are to be considered as under blockade from the arrival of the armament at Barbadoes, the sixth of January: therefore all neutral vessels, trading with these islands within that period, are clearly intended to come within the king's order in council, dated the sixth November, 1793.

I am, Sir,

Your humble servant,

J. J E R V I S."

Thomas Griffith, esq.

THE vessel and cargo condemned, on the twenty-third of April, were delivered to the captors by order of the judge, at an appraisement of four thousand six hundred and ninety-eight pounds, six shillings and seven-pence, Bermuda currency; which is stated to have been far below the actual value of the said vessel and cargo.

An appeal was immediately entered from this sentence, and the claimants prayed the restitution of their property, for the following reason, assigned by their counsel, sir William and sir John Scott.

"Because the ship and cargo were clearly and indubitably the property of American subjects, engaged in a fair and licit trade."

On the part of the captors, the reasons assigned by their counsel, mr. Erskine and dr. Nicholle, for the affirmance of the

sentence passed by the judge of the vice-admiralty court, at Bermuda, were as follows :

“ Because the proprietors of ship and cargo are natural or British subjects, supplying the enemy with provisions.

“ Because the vessel, under a pretended destination to a neutral port, had gone directly to an enemy's port, then in a state of blockade, and was returning from thence at the time of the capture, with a cargo the produce of such blockaded port, which she had taken in barter for the cargo of provisions she had carried thither.

“ Because the sole owner of the ship and cargo, was at the time of the capture, an inhabitant of the enemy's territory.”

On Saturday, the twenty-fifth of July last, the lords commissioners of appeals, heard counsel in behalf of the appellant and respondent.

Sir William Scott, on the part of the claimant and appellant, stated, that American ships in the time of peace, were in the constant practice of carrying flour and provisions to the French West-India islands. It is true, that an order of council was made on the sixth of November, 1793, and an instruction on it, directing all ships carrying supplies to, or bringing produce from the French West-India islands, to be brought in for adjudication. But this order was never considered to extend to a condemnation, and it was revoked, and another instruction issued on the eighth of January, 1794.

Sir William Scott here referred to the cases of the *Fair Lady*, the *Hetty*, the *Liberty*, and the *Essex*, as tending to establish the free trade of the Americans to the French West-India islands.

Lord Mansfield expressed his doubts as to this broad assertion of sir William Scott. And

Sir W. Wynne called the attention of the board, to the proclamation made by general Rochambeau, the governor of Martinique, that he should, under the circumstances of the island, permit the importation of provisions for a limited time, but otherwise would adhere to the French colonial laws.

Mr. Erskine, the respondent's counsel, agreed to argue the case on its particular circumstances.

Sir W. Scott in continuation contended, that as to the blockade, the British arms had not invested the island, in a way to show their intention to make it the primary object of their attack, at the time of the capture of this vessel.

Sir John Jervis's letter, introduced into the cause, furnishes no sufficient suggestion to induce the court to concede the assertion of blockade to be well founded.

As to mr. George Patterson, the owner of the ship, and of a moiety of the cargo, it is contended that he is a native of Ireland, and the doctrine of inalienable allegiance, as it formerly stood, is set up as a bar to his claim.

The independence of the American states has done away that doctrine, as to all persons settled there at the time of such independence; and the great number of persons who have emigrated to America since the independence, will require a most serious consideration before the doctrine will be applied to them.

Lord president Mansfield asked sir William Scott, if he meant to contend that an Englishman could get rid of his allegiance by going to America more than he could by going to Russia, or any other country in Europe?

Sir William Scott declined the enquiry, but repeated his assertion that the magnitude of the question from the number of persons gone to America from this country, would require the most serious deliberation of this board, before the doctrine alluded to, was enforced to their prejudice.

The master of the rolls observed, that the question would probably require some understanding between the two countries.

Sir William Scott proceeded; he remarked, that as to mr. George Patterson's birth and residence, the third witness contradicts the other two, and says, he believes mr. Patterson was born in America; so that the fact is not proved; and as to his residence, he appears to have gone to Guadaloupe on the present occasion only, and to have had no residence there; and as to the clearing out for St. Bartholomew, upon which much stress is laid, the fact is, the ship was cleared out for that island, (which is Danish) and for a market.

Mr. Erskine in reply, declared he was more convinced than ever that he was founded in asking for confirmation of the sentence of condemnation, as it is evident that the urgent want of provisions was the sole inducement to let the ship take back the cargo of sugar and coffee, without which she could only have taken melasses.

He contended that the voyage may strictly be considered as masked, the island of St. Bartholomew being a kind of emporium, and the words "for a market," a mere cover; and as to the seizure of the cargo by the French, it is evident that the owner was so well reconciled as to talk of sending a further cargo. He did not ask for condemnation on the letter of sir John Jervis; he admitted the assertion of sir William Scott, as

to its want of logical accuracy. Self-preservation, however, was essential, and as much a principle with nations as with individuals, and the political existence of this country justified his expectation of condemnation.

Martinique was then reduced; and mr. Patterfon must have known it, and been well assured that Guadaloupe was an immediate object of the British arms.

America, he contended, was entitled to no more and no less than other nations; and he had no doubt but that if mr. Patterfon should, on further enquiry (if it should be thought necessary to make it) appear to be a British subject by birth, his property would be liable to condemnation.

The counsel having closed their arguments, the lords, viz. the earl of Mansfield, lord president of the council; sir R. P. Arden, knight, master of the rolls; sir W. Wynne, knight; Silvester Douglas, esq. and Charles Grenville, esq. took the same into consideration, and made and declared their decree in the following words:

“The lords having heard the proofs read, and advocates and proctors on both sides, under all the special circumstances of the case, by their interlocutory decree, pronounced against the appeal, affirmed the sentence appealed from, and remitted the cause.”

(Signed)

ARDEN,

Register of his majesty's high court of appeals for prizes.

From the above statement and decision, it appears that the prospect of an indemnification by appeal, is delusive. The circumstances attending this capture, are as favourable as any that can be brought before “his majesty's high court of appeal for prizes.” To look for indemnification from this quarter, is nothing more nor less, than exposing ourselves to have *insult* added to *outrage*.

At this early period of the business, we find the operation of the treaty. The property of the American merchant is become the mere sport of the lords of the admiralty. If this is the effect in this instance even before the complete ratification of the treaty, what may we not expect when it becomes in full force? Does this decision express the temper and feelings of the citizens of the United States, which mr. Jay was expressly commissioned to represent? Are those captures the amount of claims to be set off against the “legal imped-

ments" of the British? If they are, what balance will be on the side of the Americans? *Not a shilling*—but the amount of *millions* will become a clear debt against the United States. Thus, by mr. Jay's treaty, we have submitted our claims to the decision of the lords of the admiralty, who, no doubt, will decide *in every case* as they have in the preceding; while the claims of the British are admitted to be settled by commissioners, who, no doubt, will draw an immense balance in favor of the English. *Who then is to discharge this debt?* The American citizens. The *merchant* who has already lost his property must be further taxed to pay British subjects. The *farmer* who has had nothing to do in contracting it, must be called on by a *land tax*. The fact is, we had better have waved our claims for indemnification, and quietly, passively, and submissively, *like good subjects of Britain*, have acquiesced in their depredations. By mr. Jay's negociation, we not only lose our property by Bermudian piracy, but have brought on ourselves *British claims*—which were never contemplated by the ministry, till they found that mr. Jay was disposed to admit them.

The insults offered to this country, are without parallel. We must be held in abhorrence by all European nations, and despised for our pusillanimity even by the British themselves. Our friends in England pity us, and our enemies laugh at us. The *former* pity us, that we have not maintained our national character, by those weapons of *commerce* and *sequestration*, which we so fully possess, and which would have made Britain more cautious in her conduct towards us. The *latter* laugh at us, that we have so soon become the dupes of the British nation by negociation. God only knows what will be the event; but this is certain, that the strides of Britain to again possess themselves of this country, are too alarming not to awaken the fears of every patriot. Their connections in America, the residents already among us, and those we may expect within a few years, it is to be feared will become too strong a phalanx to be baffled by the exertions of the *honest yeomanry* of the United States. The freedom, sovereignty and independence of our country are prostrated to Britain. Not a trait of them remains, and the *fourth of July* (unless prevented by the vigilance of the citizens) will be obliterated as a day of festival, in America. [Baltimore Telegraphe.]

*Observations on the fourteenth article of
mr. Jay's Treaty.*

BY the fourteenth article of the treaty concluded between our government and that of Great-Britain, the subjects of the king of Great-Britain may be brought to America when they are sucking babies, and remain in the country till they are grey-headed, and still be British subjects; as it is being born in the king's dominions, which constitutes them British subjects, and that they cannot alienate their allegiance, is a point fully established in the twenty-first article of the treaty, where it is agreed, "That if any subject or citizen of the said parties respectively, shall accept any commission, or letters of marque, for arming any vessel to act as a privateer against the other party, and be taken by the other party, it is hereby declared to be *lawful* for the said party, to treat and punish the said subject, or citizen, having such commission, or letters of marque, as a *pirate*." By the principle lately established, those who are born in the dominions of the king of Great-Britain, and those born within the limits of the United States, cannot alienate their allegiance. For if a man born in the United States, may go to France, alienate his allegiance, become a French citizen, engage in their navy, and be taken by the English, by what law of nature or nations, does our executive pronounce it *lawful* to treat and *punish* a *French citizen* as a *pirate*? If it be acknowledged, that the intention of the framers of the treaty, was to prevent the citizens of the United States from entering into the service of foreigners, would it not have been sufficient to have declared them *aliens*, as they expatriated themselves by their own voluntary act? But if they are still to be deemed American citizens, it only remains to enquire by what *constitutional* or *legal authority* did the authors of the late treaty, presume to pass sentence upon, and give up an *American citizen* to *foreigners*, to suffer an ignominious death by their hands; when it is declared, in the seventh article of the amendments to the federal constitution, "That no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the militia, when in actual service, in time of war or public danger. Nor shall be compelled in any criminal case to be a

witness against himself, nor be *deprived of life, liberty or property, without due process of law, &c.*"

Article eighth. "In all *criminal prosecutions*, the accused shall enjoy the right to a speedy and public trial, by an *impartial jury* of the *state* and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of council for his defence."

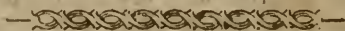
These are clear and pointed stipulations, in favour of the constitutional privileges of every American citizen, of which they cannot be divested, even by an act of congress, who alone have the exclusive authority to *define and punish piracies and felonies committed on the high seas, and offences against the laws of nations*; see the eighth section of the first article of the constitution.

This being a fair state of facts, it only remains to enquire, *First*, Whether congress have ever presumed to make a *law* to sentence an American citizen to suffer *death* as a *pirate* for attempting to alienate his allegiance by entering into the service of another nation, and acting against any other foreign nation, being enemies of the nation of which he became a member? *Secondly*, If congress have never made such a *law*, and it be granted that those which affect the life of a *citizen*, are the most important and solemn parts of legislation—can it be rationally supposed, that the senate and executive of the United States, can have a right to legislate, in this most important case, *paramount* to the whole legislative body? *Thirdly*, Has it ever been constituted *felony*, by the *law of nations*, for a subject or citizen, to emigrate in time of peace, to another country, swear allegiance to such state, and become a subject or citizen, provided the person so emigrating, never acts inimically against his parent state? *Fourthly*, When the doctrine of inalienable allegiance, as agreed upon in the late treaty, comes to be fairly established, and acted upon, will not many thousands who migrated to the United States from Great-Britain since our treaty of peace, who have been naturalized, and taken the oath of allegiance, be disfranchised? For if their first allegiance be indissoluble, the last of course must be nugatory; as they cannot be *bona fide* British subjects, and American citizens at the same time. So that messrs. George and William Patterson, of Baltimore, in Maryland, may yet fall into the hands of the incensed Britons, and be tried, convicted, and ex-

ecuted for high treason; for that they, the said George and William, being both British subjects by birth, and not having the fear of God before their eyes, had attempted to alienate their allegiance, by emigrating to Maryland, in the United States of America, and then and there, did feloniously, with malice aforethought, aid and abet the enemies of their most gracious lawful sovereign, by furnishing them with provisions, notwithstanding all the French West-India islands were under sentence of starvation, and were closely blockaded by a proclamation of sir John Jervis, for more than two months before said proclamation was issued, and while he was yet a great distance from them; so that his majesty's British American subjects, might have timely notice of his gracious intention towards the inhabitants of the French West-India islands, and not involve themselves in the crime of high treason, by feeding those whom his most humane and gracious majesty intended to starve.

A. Z.

N. B. The proclamation was issued on the eighth of March, and the farcical paper blockade, commenced on the 6th of January preceding.



FROM THE ARGUS.

Camillus refuted by Alexander Hamilton.

CAMILLUS.

"IT is true, as suggested, that our government has constantly charged as breaches of the treaty by Great-Britain, the two particulars that have been stated; but it is believed to be not true, that it has uniformly charged them as *first* breaches of the treaty—individuals may have entertained this idea—the state of Virginia seems to have proceeded upon it, in some public acts; but, as far as it is recollected, *that ground was never formally or explicitly taken by the government of the United States, till in the abovementioned letter from mr. Jefferson to mr. Hammond, when for the first time an attempt was made to vindicate or excuse the whole conduct of this coun-*

try in regard to the treaty of peace, contrary, I will venture to say, to the general sense of well informed men."

ALEXANDER HAMILTON.

In Congress, Monday, May 26, 1783.

On motion of mr. Hamilton, seconded by mr Izard.

Whereas, by the articles agreed upon on the 30th of November last, by and between the commissioners of the United States of America for making peace, and commissioners on the part of his Britannic majesty, it is stipulated, that his Britannic majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes, or other property of the American inhabitants, withdraw all his armies, garrisons and fleets, from the said United States, and from every port, place, and harbour within the same :—and whereas, a considerable number of negroes belonging to citizens of these states have been carried off therefrom, *contrary to the true intent and meaning of the said articles*:

Resolved, that the copies of the letters between the commander in chief, sir Guy Carleton, and other papers on this subject, be transmitted to the ministers plenipotentiary of these states for negotiating peace in Europe ; and that they be directed to remonstrate thereon to the court of Great-Britain, and take proper measures for obtaining such reparation, as the nature of the case will admit.

Ordered, that a copy of the foregoing resolve be transmitted to the commander in chief ; and that he be directed to continue his remonstrances to sir Guy Carleton, respecting the permitting negroes belonging to the citizens of these states to leave New-York, and to insist on the discontinuance of that measure.

Remarks on the above.

If, then, congress, as early as May 1783, complained of this infraction, they must have regarded it as the *first* breach ; for Great-Britain had not yet had time to hear of what was passing in this country on the subject of the treaty, much less

to complain of any violation on our part. It will be recollected, that the treaty had been received by congress early in the preceding month.

By this resolve, it also appears, that colonel Hamilton thought the treaty binding from the signature of the provisional articles; but Camillus contends, that it was not so until the exchange of the ratification of the definitive articles which took place more than one year later.

Nor is this the only instance in which our government *formally and explicitly* took this ground, although one would be led to conclude from Camillus, that to mr. Jefferson alone belonged the credit of discovering it.

On the 11th April, 1783, congress agreed to a proclamation, declaring a cessation of hostilities; and only four days after,

Resolved, that the commander in chief be instructed to make the proper arrangements with the commander in chief of the British forces, for receiving possession of the posts in the United States occupied by the troops of his Britannic majesty, and *for obtaining the delivery of all negroes and other property of the inhabitants of the United States in possession of the British forces, or any subject of, or adherent to his said Britannic majesty.*

Again, on the 9th August, 1786, congress resolved, that the secretary for foreign affairs cause to be made out separate lists of the numbers, names, and owners of the negroes belonging to the citizens of each state, and carried away by the British, *in contravention of the treaty*, and that he transmit the said lists to the executives of the states to which they respectively belong.

Will not Camillus have the candour, after these concurring proofs, to retract so much of his assertion as is opposed to them? Such conduct is the only amends he can make for the misapprehension he has excited on a subject which may still prove of great importance to America, the negotiations between her and Great-Britain not being yet finished.

The above resolves, and particularly the first, prove unequivocally, that col. H. cannot be the author of Camillus, an imputation which his enemies are indefatigable in fixing on him—No man who knows that gentleman can believe, that he should so soon forget an act of which he himself was the mover, and to which, as a public character, he must frequently have recurred. This is not the only instance in which the opponents of the treaty have attempted to asperse his character.

PHILO-CINNA.

A D D R E S S

Of the Citizens of Charlestown to the President.

To GEORGE WASHINGTON,

President of the United-States.

Commowwealth of Massachusetts.

Charlestown (near Boston) July 22, 1795.

SIR,

THE treaty now pending between the United States of America and Great-Britain, having much engaged the attention of this part of the country; the inhabitants of this town have been led legally to convene in their corporate capacity, agreeable to the constitution of the commonwealth, for the purpose of taking the same into consideration—and have

Voted, That this town do disapprove of the treaty now pending between the United States, and Great-Britain, as it has been read.

Voted, That this town do disapprove of the treaty as modified by the senate of the United States.

Voted, That the selectmen be requested to transmit the doings of this meeting to the president of the United States.

In compliance with the last mentioned vote, we have the honor to transmit said votes, and to submit them to your consideration; fully persuaded, that every sentiment of your heart, with every action of your life, are directed toward the public good. We are,

With the profoundest esteem and respect, &c.

Signed by the respectable the selectmen of Charlestown.

P R E S I D E N T ' s A N S W E R.

To Richard Devens, David Gardwin, Joseph Adams, Richard Frothingham. John Carter, and Eliphalet Nevell, Selectmen of Charlestown.

GENTLEMEN,

I Received your letter of the 22d of July, containing the votes of the inhabitants of the town of Charlestown, who were convened to take into consideration the treaty pending between the United States and Great-Britain.

My assent to the treaty, as advised and consented to by the

senate, and the principles which governed my determination, are now publicly known. In this, as in every other exercise of the powers committed to me by the constitution, I have aimed to promote the public good, and to merit those sentiments of personal confidence which are expressed in your communication.

With due respect,

I am, gentlemen, your obedient,

G. WASHINGTON.

United States, August 31st, 1795.



PROCEEDINGS

Of the Citizens of Frederic County, Virginia.

At a numerous and respectable meeting of the citizens of Frederic county, held agreeably to notice given in the public papers, at the court-house of said county, on Tuesday, the 1st of December, 1795.

General *Daniel Morgan* being appointed chairman, and having taken his seat, the citizens present, with one dissenting voice only, after mature deliberation, and hearing the subject fully discussed; came to the following resolutions, to wit:

1st. Resolved, that the conduct of the president of the United States, in ratifying, agreeably to the advice of two-thirds of the senate of the United States, the treaty of amity, commerce, and navigation, between the United States of America and Great-Britain, negotiated by *John Jay*, esq. is entitled to, and meets with, the entire approbation of this meeting.

2d. Resolved, that *Daniel Morgan*, *Charles Minn Thruston*, *Robert White, jun.* *Charles Magill* and *Joseph Caldwell*, be appointed a committee, for the purpose of transmitting to the president the sentiments and proceedings of this meeting.

(Signed.)

DANIEL MORGAN, Chairman.

[No. XI.]

T H E

American Remembrancer;

O R,

AN IMPARTIAL COLLECTION

O F

ESSAYS, RESOLVES,

SPEECHES, &c.

RELATIVE, OR HAVING AFFINITY, TO THE

TREATY WITH GREAT BRITAIN.



VOLUME III.

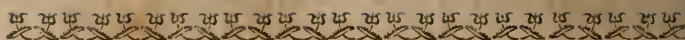


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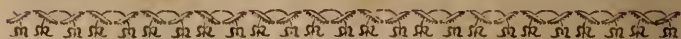
FOR MATHEW CAREY, NO. 118, MARKET-STREET;

—DECEMBER 28, 1795.—



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American Remembrancer, &c.

A T T I C U S—No. VIII.

[CONTINUED FROM PAGE 72.]

To the Freemen of the United States.

Fellow Citizens,

IT was my intention when I began these letters, to consider the treaty in all its relations; but as the merchants and traders of Philadelphia, and the chambers of commerce of New York and Boston have held up the idea of unimportance to our commerce, have deemed it a thing unworthy the attention of any other people than merchants, and not worth the risk of displeasing Great Britain, I will not differ with them, more especially as the president has given them an exclusive privilege to think on this subject; but I will proceed to examine the constitutional and political features of this monster of "*horrid mien, that to be hated needs but to be seen.*" Not being in the habit of weighing my rights and my happiness in a *gold scales*, I can the more readily dismiss the commercial consideration of the treaty; and as a few merchants and traders have insolently and presumptuously monopolized the right to judge of things relating to commerce, they certainly will not deny others the exclusive privilege of deciding upon the constitutional and political parts, of which they seem to be wholly ignorant. This is a *quid pro quo*, and has more reciprocity in it than the wisest and most profound of the addressers can point out in the treaty.

The unconstitutional origin of the treaty, has been already shown in the "*letters of Franklin*," to which I take the liberty to refer you, my fellow citizens, while I proceed to show the unconstitutionality of the instrument itself. The treaty has established a rule of naturalization, within the precincts or jurisdiction of the western posts, by which British subjects can become American citizens within any term of one year. The constitution expressly declares, that *congress* shall have power "*to establish an uniform rule of naturalization, throughout the United States.*" Here then the president and senate have not only usurped the power of congress, to establish a rule of naturalization, but they have been guilty of a two-fold breach of the constitution, by making that rule not "*uniform.*" During the last session of the federal legislature, an *uniform* law of natural-

ization was passed, by which a *five years residence* is made necessary to obtain citizenship; but this law has been superseded by treaty; and a British subject may become an American citizen in *one week* after the surrender of the posts! The most desperate "*Antifederalist*" could not have aimed a more deadly blow at the constitution than the treaty has done; and if rendering the constitution a *nose of wax*, can be called *disorganization*, *Jacobinism*, or *anarchy*, the president and senate are the greatest disorganizers, the most furious Jacobins, and most violent anarchists, in the United States. If a compact, which ought to be held sacred, and which ought to be construed and executed strictly, can be interpreted to mean any thing that floats in the mind, or flutters in the heart of the president, the security which we promised ourselves is at an end, and we are literally in the situation of our new allies, Great Britain; we have a constitution in the clouds.

The constitution declares, that "*Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States, or of any particular state.*" By the treaty, the president and senate, instead of "*Congress*," have made rules and regulations respecting the territory of the United States, and have prejudiced their claims, as well as the claims of individual states. The 2d article of the treaty guarantees to "*all settlers and traders, within the precincts or jurisdiction of the posts, all their property of every kind.*" Part of this property belongs to the *United States*, and part to *individual states*; and, notwithstanding, the president and senate have made rules and regulations respecting it. The constitution is solemnly prohibitory upon every department of the government, with respect to the claims of the United States, or of individual states, when it declares, that "*nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state;*" and in defiance of this solemn prohibition, this article was formed and ratified! The treaty of peace stipulated, that the posts should be surrendered with all convenient speed; and from the date of the ratification of that treaty, all real property, not actually held by British subjects there, became vested in the United States, and of individual states; now, as a considerable part of the territory comprehended in the precincts or jurisdiction of the posts was taken possession of by the British subjects *since* the treaty of peace, no department in the government could guarantee such possession; as the claims of the United States, and of individual states, became prejudiced thereby. Admitting a right to make

rules and regulations respecting the territory of the United States, that right appertains exclusively to *congress*.

The constitution declares that "*congress* shall have power to regulate commerce with foreign nations, and among the several states, and *with the Indian tribes*." By the 3d article of the treaty this power is assumed by the president and senate; for it declares, that "no duty of entry shall ever be levied by either party on peltries brought by land or inland navigation into the said territories respectively, *nor shall the Indians, passing or re-passing with their own proper goods and effects, of whatever nature, pay for the same any impost or duty whatever*." The power of *congress* to regulate commerce with the Indian tribes, is thus destroyed by a single coup of the presidential and senatorial hands.

By the constitution "the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as *the congress* may from time to time ordain and establish." By the 6th article of the treaty, a judicial power is given to five commissioners, two of which are to be appointed by Great Britain, and "*the award of the said commissioners is to be final and conclusive, both as to the justice of the claim, and the amount of the sum to be paid to the creditor, or claimant*." Here is a judicial power given by *the president and senate* to five commissioners, two of whom are to be *foreigners*, and a third may also be a foreigner; and these commissioners are to have a final decision upon the property of the people of the United States. To congress alone is given the establishment of a judicial power; but even congress would hardly adventure so to profane the constitution, as to establish a mongrel tribunal of *foreigners* and citizens. *The president and senate*, in the name of the United States, undertake "to cause the sum awarded by the commissioners to be paid in specie to such creditor or claimant without deduction, and at such time or times, and at such place or places as shall be awarded by the said commissioners." The constitution declares, that "*all bills for raising revenue shall originate in the house of representatives*," and that "*no money shall be drawn from the treasury, but in consequence of appropriations made by law*." The situation in which the president and senate have placed the United States by this article, give them the power of raising revenue, and of making appropriations of money according to their whim; for as a treaty is a solemn stipulation between nation and nation, every infraction of that treaty is a ground of war. If then the house of representatives refuses to originate a revenue to carry this stipulation in the treaty, into effect, it may be considered as an infraction of the

treaty, and a war may be the consequence. Was the constitution the president's guide when he formed such an article? Did he mean by it to *bruise-beat* the house of representatives into his *anglican* measures? Did he flatter himself that the freemen of America would consent to any thing, to a prostitution of their constitution, to a dereliction of every thing valuable to them, rather than unsheath the sword against his "*great, good, and dear friend*?" But the commissioners are to fix *the time when*, and the place where, the monies awarded are to be paid. Do not the president and senate undertake to raise a revenue, when they agree to pay the award of the commissioners *at the time* they shall agree upon? Is this leaving the raising of revenue to congress, as pointed out by the constitution? The president and senate have agreed to *appropriate* the monies of the United States without any law but their own will!!

Fellow citizens, these are not imaginary things, conjured up by a distempered or discontented mind—they are plain facts, which are comprehensible to every capacity, and merit the serious attention of every man who feels an interest in the welfare of his country. If the president can torture the constitution into a justification of such conduct, it lives but in name, it is an ideal existence, which can be fashioned according to the whim or caprice of the man who administers it. Such a mockery of republicanism must rouse the indignation of every uncorrupt citizen, and animate him to an endeavour to fix his rights upon a more certain and permanent basis. If a submission can be had to such a state of things as the president has created, at this moment, when our constitution has scarcely risen from its cradle, we may bid adieu to liberty, and the philosopher and the patriot may bemoan the degraded state of human nature, that has suffered the fairest prospects of happiness to be overshadowed by a pretended man of the people.

A T T I C U S.

August 28, 1795.

No. IX.

A MISTAKE has happened in the vocabulary of our country, and instead of *Jacobinism*, *Jacobitism* has reared its insaky crest among us. *Passive-obedience and non-resistance* are now the order of the day, and he who will not subscribe to the divine attributes of the president is excommunicated, and the

dire interdict of Anarchist, Antifederalist and Traitor is fulminated against him with all the fury which characterized the vatican of Hildebrand. But if such appellations are bestowed, and with such liberality, on the friends of the constitution, on those who wish its chastity preserved, and with a vestal purity secured from the rude attacks of the ravisher; by what characters shall we designate those, who with unfeeling heart make their barbarous assaults, as if liberty's goddess had turned harlot? Can language be too strong, or acumen too poignant to describe or to punish the incendiaries of virtue?

The Knights of the funding system, the Janizaries of government, the Jacobites and their PRETENDER, are in alarm—they have sounded the tocsin, and have pronounced a woe upon those who do not fall down and worship the golden image which Nebuchadnezzar has set up. Pompey's entrance into the sanctum sanctorum did not excite more horror and dismay in the Israelites, than lifting the mask from the president, and displaying his *natural visage*, have raised in the *noble orders* of our country. To touch the hem of the garment of this fabled high priest of liberty would beget distress in such interested bigots; but to strip him of his pontifical robes, and show him unworthy of them, would be in their estimation, to dress nature in mourning, and extinguish the lamp of liberty for ever. When men have purposes to answer, nothing can be too absurd for them to practise; and hence the Egyptian priest, to favour his own views, had conferred divinity upon an ox. It is high time that a superstitious veneration for a man, and a frail one for a system, should be exiled from the mansion of liberty. It is high time the temple of freedom should no longer be profaned by idolatrous worship, and be usurped by usurers, brokers, stock-jobbers, and speculators. When *men* are substituted for *principles*, liberty is as much outraged, as when the *Deity* is supplanted by a *priest*. No longer the dupe of the artifice which has been practised but too successfully upon the honest and unsuspecting American, he has at length shaken off the fetters of confidence that made him slumber over his wrongs, and now carries his crimination to the source of all his evils and his disgraces. There is justice in this, there is manliness in it; he who shrinks from such a task, or feels terror at its performance is unworthy the name of freeman. What! Shall the artifice of Hamilton deter freemen from speaking their sentiments? Shall the cry of "*treason*?" Is the *Jacobite* language of the *president's new ally* already legitimised among us, that it be treason to publish our sentiments? Alas! what a brand of nerve among the Jacobites, when a *whiffet* is deputed to do

the duty of a sturdy mastiff! Let such animals bark, my fellow citizens, while we proceed to the consideration of the unconstitutionality of the treaty, and trace in it the real “traitors” of our country.

The 8th article of the treaty is a further interference with the constitutional power of Congress to raise money, and make appropriations; for it declares, that “the commissioners shall be respectively paid *in such manner as shall be agreed upon between the parties*; and all other expenses attending the said commissions shall be defrayed jointly by the two parties, the same being previously ascertained and allowed by a majority of the commissioners.” Who are “the parties” in this case? The king of Great Britain, the president and the senate. Who agree to pay the expenses of this commission? The king and the president and the senate. Do not the president and senate pledge themselves by this article to *raise and appropriate* money to satisfy the expenses of the commission? Does the constitution recognize a right in them to make monied contracts? From whence did they derive this prerogative? Did they receive a new commission of powers from the *president’s new ally*? If the president and senate can contract debts for *one dollar*, they can do it for a *million*, the right is the same in extent that it is in degree; and by treaty they may mortgage the United States. Is this presidential and senatorial contract the *constitutional* mode of “*raising and appropriating money according to law*?” The conduct of the president in this case, in point of usurpation, is not unlike that he pursued in 1776, when he was only the officer of congress, *in raising men and increasing their pay* without any authority from that power under whom he acted, and from whom he held his commission. The *necessity* of this case cannot be pleaded in extenuation of a breach of a solemn contract.

In the amendments to the constitution we find the following article: “*The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.*” The 9th article of the treaty contains the following extraordinary stipulation; “It is agreed that British subjects who now hold lands in the territories of the United States, and American citizens who now hold lands in the dominions of his majesty, shall continue to hold them according to the nature and tenure of their respective estates and titles therein: and may grant, sell and devise the same to whom they please, in like manner as if they were natives; and that neither they nor their heirs or assigns shall, as far as may respect the said lands, and the legal remedies incident thereto, be regarded as aliens.” By what part of the constitution have the

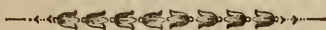
president and senate the power of regulating the tenure of real estates? We look in vain for such a grant in the constitution, even to congress itself; this right then, *not being delegated to the United States*, nor “*prohibited*” by the constitution to the states, is “*reserved to the states respectively, or to the people.*” Shall the president dare to invade the chartered rights of the states? Shall he not only expunge the letter and the form of the constitution, but shall he add to it such parts as may coincide with his arbitrary views? Shall the constitution be converted into wax by him, ready to receive the impression of a *Cæsar* or a *Cromwell*?

This article has a reciprocity in words; but let me ask, what number of American citizens hold real property in the Britannic majesty’s dominions? Can figures calculate the number of acres which *British subjects* hold in the United States? Their patents swarm over our country like the locusts of Egypt, and in a little time not a shrub or a plant will be seen in republicanism or morals that shall have escaped their ravages.

Fellow citizens, when we consider these things, on whom does the charge of *ingratitude* rest? On the people who have idolized the president, and have advanced him to the greatest honors and the utmost powers which can be communicated by freemen, or on the president, who has abandoned the people, and has considered the voice and the interest of a faction, instead of the voice and the interest of his country?

ATTICUS.

[TO BE CONTINUED.]



Defence of Mr. Jay’s Treaty.

[CONTINUED FROM PAGE 63.]

No. XXVI.

THE British trade to their possessions in their East Indies, as well as to China, is a monopoly vested by the legislature in a company of merchants. No other persons in Great Britain, nor in any of her dominions or colonies, can send a

vessel to, or prosecute trade independent of the company, with any part of Asia. The right to trade with their possessions in India is not only refused to all British subjects, the India company excepted, but is one, that Great Britain has never before yielded by treaty to any foreign nation. By the terms of the charter to the India company, among a variety of limitations, they are restrained and confined to a direct trade between Asia and the port of London; they are prohibited from bringing any of the productions of India or China directly to any part of America, as well to the British colonies as to our territories; and moreover they are restrained from carrying any of the productions of Asia, directly to any part of Europe, or to any port in Great Britain, Scotland, or Ireland, except the single port of London.

The 13th article stipulates, that our vessels shall be admitted in all the sea ports and harbours of the British territories in the East Indies, and that our citizens may freely carry on a trade between said territories and the United States, in all such articles, of which the importation or exportation shall not be entirely prohibited; provided only, that when Great Britain is at war, we may not export from their territories in India, without the permission of their local government there, military stores, naval stores, or rice. Our vessels shall pay in this trade, the same tonnage duty as is paid by British vessels in our ports; and our cargoes on their importation and exportation shall pay no other or higher charges or duties than shall be payable on the same articles when imported or exported in British bottoms; but it is agreed that this trade shall be direct between the United States and the said territories; that the article shall not be deemed to allow the vessels of the United States to carry on any part of the coasting trade of the British territories in India, nor to allow our citizens to settle or reside within the said territories, or to go into the interior parts thereof, without the permission of the British local government there.

The British trade to their territories in the East Indies is carried on by a corporation, who have a monopoly against the great body of British merchants. Our trade to the same territories will be open to the skill and enterprize of every American citizen. The British trade to these territories is direct, but confined to the port of London; our trade to the same must likewise be direct, but may be carried on from and to all our principal ports.

The article gives us a right in common with the India company to carry to these territories, and to purchase and bring from thence, all articles which may be carried to or purchased

and brought from the same, in British vessels: our cargoes paying native duties, and our ships the same alien tonnage as British ships pay in our ports. This trade is equally open to both nations; except when Great Britain is engaged in war, when the consent of the British local government is required in order to enable us to export naval stores, military stores, and rice; a limitation of small consequence: none of the articles except nitre being likely to form any part of our return cargoes. Though this article is one against which the objection of a want of reciprocity (so often, and so uncandidly urged against other parts of the treaty) has not been preferred, it has not however escaped censure.

It is said that we are already in the enjoyment of a less restrained commerce with the British territories in India, and that the treaty will alter it for the worse: in as much as we thereby incapacitate ourselves to carry on any part of the coasting trade of the British territories in India, and as we relinquish the profitable freights to be made between Bombay and Canton, and likewise those sometimes obtained from the English territories in Bengal to Ostend.

It would seem a sufficient answer to say, that this trade has heretofore existed by the mere indulgence of those who permitted it, that it was liable to variations, that a total exclusion, especially had it been of us in common with other foreign nations, could have afforded no just ground of complaint: That the relaxation which has hitherto given us admission to the British India territories, was not a permanent, but a mere temporary and occasional regulation, liable to alteration, and by no means to be demanded as the basis of an intercourse to be adjusted by compact, with a foreign nation, which would no longer leave the power of alteration in either of the parties.

But in respect to the first objection, the article amounts to this, that the rights which it does grant, shall not by implication be construed to give a right to carry on any part of the British coasting trade in India.

If we have before shared in this trade by permission, nothing in the article will preclude us from enjoying the same in future. If we did not participate in it, nothing in the article impairs either the authority of the British local government to permit our participation or our capacity to profit by such permission—This objection, therefore, falls to the ground, since the coasting trade remains as it was before the treaty was formed.*

* The terms used clearly denote this and nothing more; they are—"It is also understood that the *permission granted by this article* is not to extend to *allow*." This does not negative any pre-existing indulgence, but merely provides that the

Further, according to my information—It is not the trade between the East Indies and China, as has been erroneously supposed by some persons, but the exportation of rice and other articles, which are exchanged between the British territories in the hither and further Indies, that is denominated the coasting trade of the British territories in India. The importance of this trade is not well understood; nor am I able to say whether we have heretofore been allowed to carry it on. If we have, the little that we have heard of it, leads to an opinion that it is not an object of much consequence. Let it, however, be granted that hereafter we shall not be allowed to engage in it. Shall we have more reason to complain of this exclusion, than we have that we are refused a share in the coasting trade of the European dominions of Great Britain? or that we are excluded from the coasting trade between their islands in the West Indies? Or than the British themselves have, that by our prohibiting tonnage duty (being fifty cents per ton on entry of a foreign vessel, when our own coasting vessels pay only six cents per ton, for a year's license) they are excluded from sharing in our coasting trade; a branch of business that already employs a large proportion of our whole navigation, and is daily increasing.

In respect to the second and third objections, it may be remarked, that so far as the trade has been heretofore enjoyed, it has been in consequence of an exception from, and relaxation in, the system by which the European commerce has been regulated; that having depended on the mere occasional permission of the local government, we may safely infer (though it may have been supposed incompatible with the discretionary powers, vested in that government, to confer by treaty a positive right to carry on the trade in question) that so long, and as often as the interest that has heretofore induced the grant of this permission shall continue or exist, the permission will be continued or renewed. The stipulation, restraining the trade, may, if the parties see fit, be dispensed with, and the trade may be enlarged, or made free:—It being a contract only between them and us, the parties are free to remodel it; and without a formal alteration, if those in whose favor the restraint is made, consent to remove it, the other party is released from the obligation to observe it.*

main grant shall not convert the *revocable indulgence*, if any there was in this particular, into an *irrevocable right* by treaty.

* This has been affected to be questioned on account of what is called the peremptoriness of the expressions (to wit) "It is expressly agreed that the vessels of the United States shall not carry, &c." But there is no real room for the

Again—Surat, which is in the neighbourhood of Bombay, is the emporium of the Guzeat, and of the northern portion of the Malabar coast; the cottons shipped from Bombay to Canton, are frequently first sent from Surat to Bombay. Surat belongs to the native powers to which we have free access. If the transportation of cotton and some few other commodities from the coast of Malabar to Canton is an important branch of our commerce, what will prevent our prosecuting it from Surat or any other free port in the hither Indies?

That it may be undertaken from the ports of the native powers is rendered probable, by the circumstance, that these freights are supplied principally or alone by the native or black merchants, whose residence would naturally be in the ports under native jurisdiction more frequently than in those under the jurisdiction of any of the foreign powers.

But is it not true (and will not candour admit it) that the trade to the Asiatic dominions of the European powers has usually been confined to the nation to whom such territories belong? In our treaty with Holland, have we not even stipulated to respect their monopoly of this trade? And by our treaty with France, a nation whose liberal policy is said to have laid us under eternal obligations of gratitude, have we acquired the slightest pretensions, much less a right, to resort to, or trade with any part of their Asiatic territories?

A late decree of the convention which opened to us the ports in their West Indies, likewise laid open their remaining territories in Asia—But this measure proceeding from the necessities of the war and their inability to carry on their foreign commerce, will change hereafter, as heretofore it has done, with the establishment of peace—Did this opinion require to be strengthened, it is abundantly confirmed by the navigation act, decreed by the convention: The operation whereof is suspended for the same reason that induced the opening to foreigners that trade to their colonies and territories in the West and East Indies.

The British for more than a hundred years excluded foreigners from a share in their East India trade; for a few years past

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question—In a contract between two parties, whether individuals or nations, where a restraint is imposed upon one for the benefit of another, it is always an implied condition of the restraint that it shall continue, *unless dispensed with* by the party for whose benefit it is imposed—Thus the British government in India may remove the restraint, by continuing the indulgence in this respect heretofore granted—And it seems to me clear that the laws which the United States are to pass, for enforcing the prohibition, may, with good faith, be qualified with this provision, “*unless by permission of the British government in India.*”

they relaxed in the rigour of this system. We have availed ourselves of this circumstance, and shared with them in their India commerce. But this permission can be viewed only as an occasional departure from a general law; which may be affected by a change of circumstances, the duration of which, therefore, is uncertain. The loss and inconvenience to which our merchants may be exposed from the prosecution of a trade, depending on regulations arising from inconstant circumstances, and which frequently vary, may, in some measure, be guarded against, where the scene is not remote, and the alterations in the laws can be known soon after they are made. But in the Asiatic and our other distant commerce, it is of importance that the laws under which an adventure is begun, should be permanent. Losses to a considerable amount have been experienced by some of our merchants, who have undertaken distant voyages in the expectation of the continuation of these temporary regulations. The trade, for example, to the Cape of Good Hope (which the Dutch government ordinarily monopolize to their own people) was some time since opened to foreigners, and some of our citizens profited by it; but others, who had engaged in large adventures to that market, suffered no small disappointment and loss in finding themselves excluded, upon their arrival by a repeal of the permission to foreigners to trade there. It must then be considered as an important object secured, in respect to the principal proportion of our India trade, that alone which is capable of being pursued as a branch of our commerce, that the treaty turns a *favor* into a *right*, and that our direct intercourse with the British territories in the East Indies, in all respects as broad as that of Great Britain herself (except in the articles of rice, naval and military stores, when Great Britain is engaged in war) instead of being an uncertain and hazardous trade, as heretofore, from its precarious nature, it has been, will, hereafter, be as certain as any in which our merchants shall engage.

It is further alleged, by way of objection to this article, that it does not secure to our citizens a right to reside and settle in the British territories in India, without the consent of the British local government. The observation that has been made on a similar objection, in respect to the coasting trade in India, is equally applicable to this. The article leaves subjects precisely in the situation in which it found them. But let it be remembered that the disproportion between the numbers of the native Indians and the foreigners inhabiting their country, is more than one thousand of the former to one of the latter—that the most exact discipline and subordination among the foreigners

are therefore essential to the preservation of the British authority over that country—that no foreigner, or even a British subject, is allowed to reside there, except in the character of a servant of the company, or of a licensed inhabitant—that it has long been held as a sound opinion, that unrestrained liberty to the Europeans to emigrate to, and settle among the Indians, would, in a short time, overturn and destroy the British empire in India—This danger would by no means be diminished by conferring a right upon the Americans, freely to reside and settle in India—that we shall be allowed to reside and settle there by permission of the local British government, is fairly to be inferred from the article. But an absolute right to an entire liberty on these points, might evidently be dangerous to the British government over India—and in prudence could not have been stipulated.

The advantageous footing on which the trade is placed, is so evident, that those who had no reliance on the objections urged against it, but who, nevertheless, have been unwilling to allow the treaty any merit on the score of this article, have endeavoured to show that our India trade is of little importance, and of small value.

Whatever article can be supplied by the India company, may likewise be supplied by us, and some of them on better terms by us, than by them: The reports of the committee of the directors of the East India company, published in 1793, when their charter was renewed, afford useful information on this subject, and disclose facts which show the advantages that we shall possess in this trade over the company. They admit, that in the articles of iron, wines, canvas, cordage, arms, and naval and military stores, foreigners can enter into a beneficial competition with them, and that canvas and cordage, and we may add, all naval stores and several other articles, can always be furnished in India by foreigners, cheaper than by the company.

If we appreciate the advantage we have over them, in such articles of supply as are of our own growth or production, as well as in the wines not unusually procured by touching at Madeira on the outward voyage to India, and compare it with the advantage that they have over us in the few articles of choice, which they purchase at the first hands, and which we must import in order to re-export to India, it is probable that our cargoes to India, will, on the whole, be laid in as advantageously, if not more so, than those of the India company. If we consider the vast extent of territory, the numerous population, and the established manufactures of India, so far from supposing

that a free trade to that country will be of little value to a young and enterprising nation, whose manufactures are still in their infancy, we ought rather to conclude that it is a country with which we should be solicitous to establish a free trade and intercourse.

Every one who has bestowed the slightest attention upon the foreign manufactures consumed in our country, must have observed the general and increasing use of those of India, owing to the better terms on which they can be procured from Asia than from Europe. Though no document is at hand that will show the value of the annual importations from India, it is stated by Mr. Coxe, in his View of the United States, that the amount in value of our importations from Asia is more than one fifth of the value of our whole annual consumption of foreign commodities. It is true that the porcelain, silks, nankeens, and teas of China, form a large portion of this annual importation. But, after a full deduction on this account, a great and profitable branch of our commerce will be found in our trade to the East-Indies. It should be remembered, also, that it is not the consumption of our own country that regulates the quantity of India goods that we import; other countries have been supplied through us with the fabrics and productions of both India and China. The treaty will enlarge this demand.*

Several circumstances calculated to give our trade with Asia, an advantage against foreign competition, and a preference to our trade with Europe, are deserving of attention.

First. The direct trade between us and Asia, including the East Indies as well as China, cannot be prosecuted by the British East India company, their ships being obliged to return to the port of London, and there to discharge.

Second. The difference between the duties on Asiatic goods imported in American bottoms direct from Asia, and the duties imposed on the same goods in foreign bottoms from Asia or from Europe; being on all articles a favorable discrimination, and in the articles of teas, the duties on those imported in foreign bottoms being fifty per cent. higher than on those imported in American bottoms.

The particular difference of duties on Asiatic goods imported in American and in foreign bottoms, so favorable to our own navigation, will not be affected by the right reserved by Great Britain to impose countervailing duties in certain cases; that

* Perhaps from the certainty of the rights which it confers, it may invite a foreign capital to extensive enterprizes, in which the United States will be an *entrepot* between India and a great part of Europe.

right being relative to the intercourse between the United States and the British territories in Europe.

Third. The European intercourse with Asia is, in most cases, conducted by corporation or exclusive companies—and all experience has proved that in every species of business (that of banking and a few analogous employments excepted) in conducting of which, a competition shall exist between individuals and corporations, the superior economy, enterprize, zeal, and perseverance of the former, will make them an overmatch for the latter; and that while individuals acquire riches, corporations, engaged in the same business, often sink their capital and become bankrupt. The British East India company are more overburdened with various terms and conditions, which they are required to observe in their Asiatic trade, and which operate as so many advantages in favor of their rivals in the supply of foreign markets. The company, for example, are obliged annually to invest a large capital in the purchase of British manufactures to be exported and sold by them in India; the loss on these investments is considerable every year, as few of the manufactures which they are obliged to purchase, will sell in India for their cost and charges—Besides, from the policy of protecting the home manufactures, the company are, in a great measure, shut out from supplying India goods for the home consumption of Great Britain. Most of the goods which they import from India, are re-exported with additional charges, incurred by the regulations of the company, to foreign markets, in supplying of which we shall be their rivals, as from the information of intelligent merchants, it is a fact that Asiatic goods, including the teas of China, are on average, cheaper within the United States than in Great Britain.

Fourth. The manufactures of Asia are not only cheaper here than in Europe, but in general they are cheaper than goods of equal quality of European manufacture—So long as from the cheapness of subsistence and the immense population of India (the inhabitants of the British territories only being estimated at forty millions) the labour of a manufacturer can be procured from two to three pence sterling per day, the similar manufactures of Europe, aided with all their ingenious machinery, is likely, on a fair competition, in almost every instance, to be excluded by those of India. So apprehensive have the British government been of endangering their home manufactures by the permission of Asiatic goods to be consumed in Great Britain, that they have imposed eighteen per cent. duties on the gross sales of all India muslins, which is equal to twenty-two per cent. on their prime cost: The duties on coarser India goods

are still higher, and a long catalogue of Asiatic articles, including all stained and printed goods, is prohibited from being consumed in Great Britain.

The British manufacturers were not satisfied even with this prohibitory system—And on the late renewal of the company's charter, they urged the total exclusion from British consumption of all India goods, and moreover proposed that the company should be held to import annually from India a large amount of raw materials, and particularly cotton, for the supply of the British manufacturers.

Those facts are noticed to show the advantages to be derived from a free access to the India market, from whence we may obtain those goods which would be extensively consumed even in the first manufacturing nations of Europe, did not the security of their manufactories require their exclusion.*

CAMILLUS.

No. XXVII.

THE third article contains the terms and conditions of the trade and intercourse that it authorises between us and the British colonies on the American continent. The twelfth article was intended to adjust the trade between us and the British islands in the West Indies. The thirteenth article secures to us a direct trade with the British territories in the East Indies; and it is the office of the fourteenth and the fifteenth articles, to ascertain and establish the terms of the intercourse and trade between the territories of the United States and the British dominions in Europe.

The fourteenth article establishes a perfect and reciprocal liberty of commerce and navigation between the territories of the United States and of the British dominions in Europe; stipulates that *the people and inhabitants* of the two countries respectively, namely, of the United States, and of the British dominions in Europe, shall have liberty to come with their ships and cargoes to the ports, cities, and places of each other, within the territories and dominions aforesaid, to resort and re-

* Great Britain has made it a serious point, in which she has in more than one instance succeeded, to engage foreign powers (the emperor was one) to renounce establishments for carrying on the trade with India, from their own territories: yet this treaty opens all her territories to us. And yet it is not only denied merit, but criminated, in this very particular.

side there, without limitation of time, to hire houses and stores for the purpose of commerce; and that the merchants and traders on each side shall enjoy, for their commerce, the fullest protection and security, subject, notwithstanding, in respect to the stipulations of this article, to the laws of the two nations respectively.

As this article, in the customary language, employed in the introductory articles of commercial treaties, speaks of a perfect liberty of commerce and navigation, without excepting any commodity, or specifying any impost or duty, it was possible that a latitude or freedom of trade, inconsistent with the revenue laws, and policy of the two nations, might have been claimed under it; hence the propriety of the provision with which the article concludes, and which reserves to the parties respectively, the power of avoiding this inconvenience, by continuing and enacting such laws as may be proper for the purpose.

But as under this power again, partial duties, and even partial exclusions, might have been established, whereby ships and merchandizes, as well as the articles of the growth, produce, or manufacture of one of the parties, might have been made liable to higher duties and imposts in the territories of the other, than the ships and similar merchandizes, and articles of the growth, produce, or manufacture of other nations; or whereby one of the parties might prohibit the importation or exportation, by the other, of any article to and from his territories, the importation or exportation whereof was at the same time free to some other nation: In order to prevent such inequalities, and to secure effectually to the parties, a right to carry on their trade with each other on terms equally advantageous and extensive, with those established by either, with any other nation: The fifteenth article stipulates—

1. That no other or higher duty shall be exacted or paid, on the ships and merchandizes, nor on the articles of the growth, produce, or manufacture of one of the parties, on their entry or importation into the territories of the other, than shall be payable on the like ships, and merchandizes, and on similar articles of the growth, produce, or manufacture of any other nation.

2. That no article, the importation or exportation of which by either party, to or from the territories of the other, is prohibited, shall be imported or exported to or from the same by any other foreign nation; and that every article allowed to be imported or exported to or from the territories of either party,

by any foreign nation, may be imported or exported to or from the same, by the parties respectively.

By these stipulations it is agreed, that the people and inhabitants of the United States and of the British dominions in Europe, shall have the right to carry on trade between the said territories in all articles and commodities in which any other foreign nation may trade with either of the parties; that the impost or duties on any article in the course of such trade, shall be no other or higher than the lowest imposts or duties paid by any other foreign nation on the like article; that both parties shall remain free, totally to prohibit the importation or exportation, to or from their respective territories, of any species of goods or merchandize, or to increase the existing duties, or to impose new ones on the importation of any species of goods or merchandizes, into their respective territories; such prohibitions and duties operating equally against all foreign nations. So far as respects the interchange of commodities between the parties, these stipulations breathe the spirit of reciprocity: the residue of the fifteenth article principally relates to the navigation which the parties shall employ in this trade.

The first clause of the 15th article, in the spirit of those treaties which mutually confer the right of the most favored nations, stipulates that no other or higher duties shall be paid by the ships of the one party in the ports of the other, than such as are paid by the like vessels of all other nations.

By our laws, a difference exists between the tonnage duty paid by an American vessel, and that paid by a foreign vessel in our ports—the American vessel pays only six cents per ton on her entry—the foreign vessel, on her entry, pays fifty cents per ton, and about twenty per cent. more duties on all teas imported from Europe, and ten per cent. more duties on the importation of other goods, than are payable on the importation of the same goods, in an American vessel.

By the British laws, the differences between the duties paid by British and foreign vessels in the British ports in Europe, is less than that which exists in our ports:—the consequence is, that a British vessel, of a given burden, pays considerably more tonnage duties in the trade between our territories and the British ports in Europe, than is paid by an American vessel of the same burden, engaged in the same trade.

The trade being laid open to both parties, the principle of equalization of duties was very naturally deemed an equitable basis of treaty. This could be effected by lowering the American alien duties to the British standard, or by raising those of Great Britain to the American standard. The former might

have been inconvenient to our revenue, especially since, if it was not general, it would have formed, in respect to foreign nations, an unpleasant discrimination in our laws.

The American tonnage duty, therefore, was left to operate; and by the 15th article is agreed, that the British government shall reserve a right to raise the tonnage duty on our vessels entering their ports in Europe, so as to make it *equal* to the tonnage duty payable by their vessels entering our ports: And in order to balance the difference of duties on goods imported into our ports by American or by British vessels, the effect whereof is the same as that which proceeds from an alien tonnage duty, the article further agrees, that the British government shall reserve a right to impose such duty as may be adequate to effect this end. The preceding clause of this article stipulates, that the vessels and cargoes of each shall pay no higher, or other duties, than those imposed on the like vessels and cargoes of all other nations; it was, therefore, necessary to reserve a right to increase against us, their alien tonnage duty, and to impose the countervailing duty in question; as, without such reservation, the same could not have been done, unless by laws equally operating against all other nations—which would have been unjust in reference to such of them as might not, like us, have discriminated in their duties between their own and foreign vessels.

Two methods have been suggested, by which this countervailing power might be executed.

One by imposing a *pro rata* duty on the importation of goods into the British ports in Europe by American vessels, equal to the difference between the duties payable in our ports on the importation of goods by American or British vessels.

The other, by imposing the identical duty on the exportation of goods from the British ports in Europe, by American vessels, which forms the difference between the duties payable on the importation of the same goods into our ports by American or British vessels.

As the articles imported by our vessels into the British ports in Europe, are dissimilar from those imported from the same into our ports, one rule of difference would not effect the equalization sought for; and as our difference of duties is not the same on all articles, being higher on some than on others—and as, moreover, the quantities and amount of different articles differ widely, and are liable to continual proportional variations, no uniform average rule of countervailing these differences can be devised; the correct execution, therefore, of this power, in

the method first suggested, is impracticable, and, it is presumed, must be discarded.

The power, then, it would seem, can only be equitably exercised by imposing on the articles which we shall export in American vessels from the British ports in Europe, a duty identically the same as that which constitutes, in any case, the difference of duty, payable in our ports, on the same articles imported from the British ports in Europe, by a British or American vessel. Thus they may impose on tea and other Asiatic goods, as well as on the European goods, which we shall export from the British ports in Europe, the identical duty or the same sum which constitutes the difference of duties payable in our ports on the importation from thence of the same articles by an American or a British vessel.

The right to countervail our alien tonnage duty by imposing an alien tonnage duty on our vessels entering the British ports in Europe, equal to that which shall be payable on their vessels entering our ports, will continue so long as the commercial treaty shall endure, and will apply to any future increase of the tonnage duty on foreign vessels that we may establish; it is however stipulated in the conclusion of the fifteenth article, that we shall abstain from increasing the tonnage duty on British vessels, and also from increasing the difference that now exists between the duties payable on the importation of any articles into our ports in British or in American vessels, until the expiration of two years after the termination of the war between France and Great Britain. But we are free to increase the one or the other, after the expiration of that period; and though the British government will have a right to countervail, by additional tonnage duties, on our vessels, any increase of that duty on their vessels; yet they will have no right to countervail any increase of the difference between the duties payable on the importation of any articles into our ports, in British or in American vessels, unless by a duty common to all foreign nations; the right reserved on this subject, being confined to the difference that, *now* exists, will not reach such future increase.*

From this analysis of the 14th and 15th articles, we are the better enabled to perceive the truth of the following propositions.

* How ridiculous, then, the argument, if the basis of it were otherwise true, that the treaty, by tying up the government from future discrimination, has prostrated our navigation before Great Britain? can a restraint which is only to operate the short term of two years after the termination of the present war, have the mighty effect of sacrificing our navigation?

1. As, for the purpose of encouraging or protecting the agriculture and manufactures of Great Britain, several of our productions, in common with similar productions of the other nations, are prohibited from being imported into the British ports in Europe; we are free, whenever our interest shall require it, also to exclude any of the productions of the British dominions from being imported into our ports, extending such exclusions, as they do, to the like manufactures and productions of foreign nations.

Should that part of the twelfth article, which has not been ratified, in its modification retain the stipulation relative to the importation of coffee, sugar, and the other productions of the West Indies, it would constitute an exception to this proposition. But as the West India productions are dissimilar to those of our own country, they would not fall within the reason of these prohibitions, and, therefore, the exception would be of no consequence.

2. As, for the like reasons, some of our productions are subject, in common with the like productions of other nations, to high, or prohibitory duties in the British ports in Europe, we are free, likewise, to impose similar duties on any of the productions or manufactures of the British dominions, extending such duties, as they do, to the like productions and manufactures of other foreign nations.

3. As the navigation act of Great Britain, in order to extend their own shipping, has heretofore confined the importation of foreign productions into the British ports, to British ships, and to the ships of the country producing the same; the 15th article appears to contain an important innovation on this celebrated act; inasmuch as, by the most obvious construction of the terms, it gives us a right to import from our own territories into the British ports in Europe every article and description of goods and merchandizes, which any nation in their own ships is allowed to import—In consequence whereof, while all other foreign nations are prohibited and restrained from importing in their own vessels into Great Britain any goods or merchandizes, except those of their own particular growth, produce, or manufacture, we, by the treaty, have a right to carry from our ports to the British ports in Europe, not only goods and merchandizes of our own growth, produce, or manufacture, but also all such goods and merchandizes, the growth, produce, or manufacture of any foreign nation, as a nation producing or manufacturing the same, would import in their vessels into Great Britain.

4. Should it ever be politic to exclude all foreign vessels from importing, or exporting, any species of goods, wares, or merchandizes, by confining their importation or exportation to our own vessels; we are perfectly free to do so; with the exception, relative to the West India productions, referred to under the first proposition; thus, for example, we may prohibit the importation of all Asiatic goods, except in American bottoms.

That these articles of the treaty leave our navigation and commerce as free, and secure to us as extensive advantages as have before been procured by our commercial treaties with foreign nations, will be seen by the following comparison:

1. By the articles before us, the parties restrain themselves from imposing any other or higher duties on the vessels and cargoes of each other, than they impose on the vessels and cargoes of all other nations; and also from imposing a prohibition of the importation or exportation of any article to or from the territories of each other, which shall not extend to all other nations. By the third and fourth articles of our treaty with France, and by the 2d and 3d articles of our treaty with Prussia, it is stipulated, that the subjects and citizens of the respective parties, shall pay, in the ports, havens, and places of each other, no other or greater duties or imposts, of whatsoever nature they may be, than those which the nations most favored shall be obliged to pay: and moreover, that they shall enjoy all the rights, liberties, privileges, and exemptions in trade, navigation, and commerce, which the said nations do, or shall enjoy: and by the 2d article of the former, and the 26th article of the latter treaty, the parties agree mutually, not to grant any particular favor, in respect to navigation or commerce, which shall not immediately become common to the other party, who shall enjoy the same favor, if freely granted, or on allowing the same compensation, if the concession was conditional.

The stipulations in the three treaties are, on these points, equivalent.

The 2d and 3d articles of our treaty with Holland, and the 3d and 4th of our treaty with Sweden, likewise contain mutual stipulations, that the subjects and citizens of the several parties shall pay in the ports, havens, and places of their respective countries, no other or higher duties or imposts than those which the nations most favored shall pay; and that they shall enjoy all the rights, liberties, privileges, and exemptions in trade and navigation, which the said nations shall enjoy.

2. The articles before us, after stipulating that there shall be between our territories and the British dominions in Europe, a reciprocal and perfect liberty of commerce, declare, that the same shall be subject always to the laws of the respective countries. The introductory articles of our treaties with France, Holland, and Sweden, after asserting the intentions of the parties to take equality and reciprocity as their basis, likewise leave each party at liberty to form such regulations respecting commerce and navigation as it shall find convenient to itself—and the 2d and 3d articles of our treaty with Prussia, after stipulating the rights of the parties, respecting the duties and imposts, and the freedom of their navigation and trade, likewise require their submission to the laws and usages established in the two countries.

3. The articles before us, in their provisions relative to navigation, stipulate, as has been already observed, in common with our other treaties, that the ships of the parties shall not be subject to higher or other duties, than those paid by all other nations. They go farther, and agree to vary this rule, so far as shall be necessary to equalize the tonnage duty imposed by the parties on the ships of each other. Our treaty with France is the only one in which we discover a similar stipulation.—France had a high alien tonnage duty on all foreign vessels transporting the merchandize of France from one port to another port in her dominions. We had a less alien tonnage duty on foreign ships employed in a similar trade: though not equally extensive; the case is parallel to that which exists between us and Great Britain. We have a high alien tonnage duty on all foreign vessels entering our ports; Great Britain has a less alien tonnage duty on foreign vessels entering her ports. In our treaty with France we reserve a right to countervail the alien tonnage duty imposed by France; and in like manner, in our treaty with Great Britain, she reserves a right to countervail the alien tonnage duty imposed by us. The object, in both instances, has been to place the navigation of the parties on the footing of exact equality.

The preceding exposition of these articles, illustrated by the comparison of their provisions, with the analagous articles of our other treaties, would be sufficient to vindicate them against the objections to which they have been exposed.—It is, however, thought adviseable to take notice of such of these objections as are likely to have any influence on the public opinion—This will be done in a subsequent number.

AN extraordinary construction of the last clause of the fourteenth article has been assumed by the writer of Cato; his mistake in this instance, has been the foundation of many of the errors with which that performance abounds. The article stipulates that there shall be a perfect and reciprocal liberty of navigation and commerce between our territories and those of Great Britain in Europe, subject *always* to the laws and statutes of the two countries, respectively. This navigation and commerce, says Cato, must be subject to, and defined and regulated by the laws and statutes of the two countries, which existed at the time of making the treaty, all future laws, that either party might be disposed to make, relative to the same, being excluded.

The reason assigned, in support of this interpretation, is, that the article would be nugatory, did not the laws and statutes alluded to, mean only those in existence at the making of the treaty; since future laws might impair or destroy what the article confers.

Nothing in the expressions themselves requires this interpretation.

The customary and established meaning of them in other treaties would lead to a rejection of it.—The object of the clause is not the limitation of the legislative power of the parties, but the subjection of their mutual navigation and commerce to their respective laws.—This end is most fully attained by understanding the parties to mean their future as well as their existing laws. Besides, the interpretation must be such as will not destroy the use and meaning of other parts of the treaty. If this construction is just, some of the most important stipulations of the fifteenth article would really become useless. For instance, if the laws, existing at the time of making the treaty, are alone to prevail, the articles of commerce, admitted or excluded by those laws, must remain entitled to admission or liable to exclusion. Why then say in the fifteenth article “that no prohibition *shall be imposed* on the exportation or importation of any articles to or from the territories of the parties respectively, which shall not extend to all other nations.” If a prohibition, applying to all foreign nations, may be imposed (as the clause allows) this would be a new or subsequent law, varying the law existing at the time of making the treaty, and consequently defeating the construction in question.

The reason adduced by Cato to support his construction is equally defective with his interpretation itself. The fourteenth article is in general terms, and similar, as has been shown, to the introductory articles of other treaties; so far from the last clause thereof being capable of destroying the preceding stipulations; it is the peculiar province of the next article to ascertain the points which the parties mutually agree to except from their legislative power. In all cases not thus excepted, the navigation and commerce of the parties is subject to their existing or future laws.

It is not necessary to remark on the several objections which have proceeded from the opinion that the treaty restrains us from imposing prohibitory duties and exclusions: they are but subdivisions of the error that has been just combatted.

Another objection which has been stated by several writers, and much laboured by Cato, is, that under the right reserved to the British government to countervail an alien tonnage duty, by the imposition of an equivalent one on our vessels entering their ports, they would gain and we should lose.

Several methods are adopted to prove this opinion. The observation that we have a tonnage duty on our own vessels, and that Great Britain has none, is repeated by way of objection against this as well as against the proposed adjustment contained in the 12th article. The same reply already given might be sufficient in this place.

But is it true that British ships entering their own ports in Europe are wholly free from a tonnage duty? the contrary is the fact; since it is understood, that they pay a tonnage duty for the support of light houses, and some other institutions, connected with their navigation, which, in all their ports, exceeds the tonnage duty of six cents per ton, that we levy on the entry of our own vessels employed in foreign trade. But Great Britain (it is alleged) will not only impose in virtue of this reserved right, fifty cents per ton on our vessels entering her ports, but in every port except that of London, she will furthermore exact one shilling and nine pence sterling, or thirty nine cents per ton, for light money and Trinity-dues more than is paid by her own vessels; this, added to the difference before stated, would have, it is said, a very discouraging effect upon our navigation. Our tonnage duty is a tax not divided and appropriated, like the light money, or Trinity-dues, in Great Britain, to specific, and particular objects—but when levied, goes into the treasury with the duty of impost, and stands appropriated to the various objects to which that duty is appropriated—among those objects is the support of light-houses—it is

not the object to which the tax is applied that gives a denomination; whether it goes to support the civil list, or to pay annuities, or to maintain light houses, or to support hospitals, it is equally a tonnage duty. A tonnage duty then of a certain amount, is now paid by American vessels entering the ports of Great Britain. This duty is not uniform, being less in London than in the other ports, and, in some instances, less than the tonnage duty paid by British ships entering our ports—The object of this clause (8th of the 15th article) is to equalize the alien tonnage duties of the parties. Hence the reservation of a right to the British government, to impose on our vessels entering their ports in Europe, a tonnage duty equal to that which shall be payable by British vessels in our ports. It would be against the manifest views of the parties as well as against the explicit terms of the article, to impose a tonnage duty (whether for light money, Trinity dues, or any other purpose) which should exceed that which shall be payable by British vessels in our ports.

The right reserved is expressly to impose on our vessels an equal, not a greater tonnage duty than we shall impose on their vessels. This objection, therefore, must be abandoned.

But again, it is urged, that our navigation, should it wear Scylla, must perish on Charybdis: for we are gravely told by Cato, that under the right reserved to the British government to impose such duty as may be sufficient to countervail, or, which is equivalent, to balance the difference of duty payable on the importation into our ports of Asiatic or European goods by American or by British vessels, our ships will be thrown out of the trade with the British European dominions; because under this right, the British government will impose a duty on our productions carried to their ports in our own ships, equal to the whole duty payable on the goods and merchandizes imported into our ports by British ships; and as the goods and merchandizes which we receive from them exceed in value those that they receive from us by one-third, and as the duty to be countervailed is at least ten per cent. ad valorem on the goods received from them, the consequence will be, that the counter-vailing duty must amount to fifteen per cent. on the value of all our productions carried in our own ships to the British ports in Europe, while the same will be free in British ships. A more extravagant construction,* or an argument more inaccurately formed can scarcely be imagined.

* If I mistake not, the assertion of Cato, as to the *whole duty*, has been retracted; but the residue of his error on this point remains unrecalled.

The countervailing right is not applicable to the whole duty payable on goods and merchandizes imported into our ports in British ships, but expressly confined to the difference of duty now payable on the same when imported by American or by British vessels—This difference is one-tenth part of the duty upon all European goods, that is to say, these goods pay one-tenth part more duty when imported in British vessels than is paid on the same when imported in an American vessel; in all cases, therefore, where our impost is ten per cent. ad valorem, the difference of duty to be countervailed amounts to only one per cent. on the value of the goods, instead of ten per cent. as is alleged by Cato; in the instance of teas imported from Europe the difference is greater: again it is not an aggregate sum, that is to be apportioned under this countervailing right, for this sum would be liable to constant variation according to the quantity and species of goods imported into our ports from time to time by British vessels; and besides, the British government possess no means whereby the amount thereof could be ascertained.

Cato feels and admits the force of these remarks as decisive against an average duty, without perceiving that they possess equal strength against his project of countervailing the whole duty paid on the importation of goods and merchandizes into our ports by British vessels; for the same variation in the amount, and the same want of the means to ascertain it, will operate in both cases. The reasons which he himself employs to prove that an average duty cannot be ascertained, equally show the impracticability of the method which he considers as the one that will be employed in the execution of the countervailing right reserved to the British government. It has before been stated, that the natural as well as the equitable mode of executing this power will be to impose a duty on the goods imported by us from their European ports exactly the same as makes the difference of duty on the importation thereof into our ports by American or by British vessels.

Admitting that the execution of the countervailing right reserved to Great Britain will do no more than place the navigation of the parties on an equal footing in their mutual intercourse, still we are told that for this, likewise, the treaty is blameable, because even equality will be such an advantage to our rival, that we shall be unable to maintain the competition.

This objection brings with it a quality rarely to be discovered in the opinions of the cavillers against the treaty. Their usual error is a false and magnified estimate of the comparative resources, strength and importance of our country; in this instance,

shifting their ground, they fall into the opposite extreme, and contend for our inferiority in a branch of business in the prosecution of which, we are unquestionably able to meet a fair competition with any nation.

With what propriety could we have proposed or expected an adjustment of our intercourse by which our vessels should have been placed on a better footing than those of the other party? As the trade was mutually beneficial, why could we, more than Great Britain, ask for an arrangement that should subject our rival to comparatively heavier burdens? Does any considerate man believe, that it would have been proper for us to ask, or that there is the least probability that Great Britain would have acceded to, an arrangement on the subject of our mutual navigation, that should have secured to us advantages denied to them? To place the navigation of the parties on an equal footing, was all that could be rationally expected by either—and so far from such a settlement being injurious to us, the contrary has long been the opinion both here and in Great Britain.—If it is true, that we are unable to maintain a competition with the British navigation, how are we to account for the jealousy that is understood to have shown itself on their part on this subject?

But the fact is otherwise—British ships cannot be built and equipped as cheap as American ships, nor are they victualled and manned* on as good terms. Our country abounds with excellent materials for ship-building. Great Britain is in a great measure dependent upon other countries for a supply of them. The materials for the construction of ships are much cheaper in America than in Great Britain; and intelligent characters in Great Britain as well as in America have affirmed, that an American merchant ship of any given burden, can be built and equipped for sea one-third cheaper than a British, Dutch, or French ship of equal goodness. Mr. Coxe informs us, that the cost of an American ship, built of our live oak and cedar, is from 36 to 38 dollars per ton, completely finished; while an oak ship in the cheapest part of England, France, or Holland, fitted in the same manner, will cost from 55 to 60 dollars per ton. The capital employed on the American merchantmen is therefore one-third less on any given amount of tonnage than that employed in the same amount of British tonnage; or the money requisite to build and equip for sea two British

* In the comparison in this particular, we must combine the *number* of hands with the terms of compensation according to which the vessels of the two countries are navigated.

merchant ships, will be sufficient to build and equip for sea three American merchant ships of the same burden and of equal goodness. It is not only the difference in the first cost, but to this should be added the difference of interest and insurance, the annual amount whereof is ascertained by the value of the ships.

If we add to this, the comparative advantages that we possess in victualling and manning our vessels, independent of the acknowledged and distinguished skill and enterprize of our seamen, it may be safely affirmed, that no American who knows the character of his countrymen, and who is not ignorant of our peculiar resources for ship-building, will doubt our superiority in an equal and fair competition with any other nation.

It is further alleged, that the treaty wants reciprocity, inasmuch as the whole territory of the United States is laid open to the British navigation and commerce, while, in return, the British territories, *in Europe only*, are opened to us. The short answer to this allegation is, that it is not true.—All the British territories in Europe are laid open to us; all their territories in Asia are also opened to us; the treaty likewise opened all their territories in the West Indies. The article relative to this branch of trade, as has already been observed, is excepted from the ratification of the treaty, and made the subject of future negociation. The British territories on our continent, that of the Hudson's Bay company excepted, are also opened to us in like manner as ours are opened to them. The intercourse is confined on both sides to the interior communications, the inhabitants of those colonies being equally destitute of a right to resort, by sea, with their ships to our ports and harbours as we are of the right to resort, by sea, with our ships to their ports and harbours.

The territory of the Hudson's Bay company, the island of Newfoundland and the establishments on the coast of Africa, are the only British dominions to which the treaty, in its original form does not give a right of intercourse and trade.

The settlement in the Bay of Honduras is on Spanish lands, and the right of precedence is conceded for specified objects, beyond which the Spanish government are vigilant to restrain the settlers.

Spain may possibly be induced to allow us a right in common, with Great Britain, to cut mahogany and die woods in this region; but Great Britain cannot, consistently with her convention with Spain, share with us the privilege that she enjoys.

Newfoundland is a mere establishment for the British fisheries. The African trade has been, and might hereafter be pursued, if our humanity and the force of public opinion did not impede it, without procuring a right to resort to the British ports in that quarter; and in respect to the unsettled territory of the Hudson's Bay company, about which so much has been noticed and written, it is of no sort of importance, except in a small Indian trade that employs two or three annual ships which arrive there in August, and escape in September; besides, that this trade belongs to a company who possess a right to the exclusive enjoyment of it even against their fellow citizens. It is finally alleged that the treaty will bind up and restrain our government from making more specific and beneficial treaties of commerce with other nations.

Those who urge this objection, have generally placed great reliance on another objection, which asserts that the treaty with Great Britain violates the constitution, because it amounts to a regulation of commerce, the power to regulate which is vested in congress and not in the executive.—Yet these very characters, in the next breath, maintain that the treaty is bad, because it precludes our executive government, (for no other power can make treaties) from making more minute and beneficial commercial treaties with other nations.—If these observations can be reconciled, it must be thus.—The constitution does not authorize the executive, with the aid of the senate, to make a commercial treaty with Great Britain, having vested in congress the power to regulate the trade between us and that nation; but it allows the executive to make commercial treaties with any other nation, which may establish the most material and minute commercial and revenue laws, without affecting the power vested in congress to regulate trade.—That we may have characters among us sufficiently intemperate to wish that such was the constitution, I am not prepared to deny;—but that such a construction can be made out, yet remains to be proved.

The objection, as usual, is made in a loose and inaccurate manner; literally interpreted, we should infer that the treaty contained an article, whereby we had agreed with Great Britain, that we would not form any future treaties of commerce with any nation: But no such stipulation exists.

Is it meant by the objection to be alleged, that we can form no commercial treaty, whereby for an advantage yielded on our part, we may acquire a privilege in return, unless we yield the same advantage to Great Britain gratuitously and without receiving from her the equivalent?

Admitting the truth of this objection, it might be replied: So on the other hand, Great Britain can form no commercial treaty, whereby, for an advantage yielded on her part, she may acquire some privilege in return, unless she yields the same advantage to us gratuitously and without receiving from us the equivalent; and as Great Britain, whose commercial relations are equally extensive with ours, and whose capital far exceeds ours, is equally restrained on this point, our chance of gain would be fully equal to our chance of loss.

But the allegation is not generally true, and the objection, when examined, will be found to be of little weight, even with those who may imagine that nations do sometimes make good bargains by the purchase of privileges and exemptions in their foreign trade. The case that has been chosen to enforce the objection, shall be employed to invalidate it.

Admit that the treaty with Great Britain is in operation—that the oil and provision merchants of the United States, and the wine and brandy merchants of France are desirous of a treaty between the two countries, whereby those commodities shall be received from each other on low duties or freely—admit farther, that the governments of the two nations are disposed to make such a treaty (this is the case again put by the opposers of the treaty as impracticable) what will restrain the conclusion of this treaty? The disadvantage that will arise from our treaty with Great Britain? No, for Britain produces neither wines, nor brandy made from wines, with which she could supply us; she therefore could gain nothing, nor should we lose any thing by the conclusion of such a treaty. All that will be requisite, therefore, in the formation of such treaties, will be to choose for the purpose such articles of the growth, manufacture, or produce of any country with whom we desire to treat as are not common to it and the British dominions, and any skilful merchant will quickly make the selection—Hence it appears that the objection is not well founded in point of fact.

But though it may be practicable, will it be politic in us to conclude no commercial treaties of this character with any nation? If we resort to precedents as guides, we shall discover few, the history of which would encourage us. Indeed they are a description of conventions not often formed between nations.

They are of difficult adjustment, and necessarily increase the provisions of the commercial code, sufficiently intricate, when only one rule prevails in respect to all nations. Besides, however perfect may be the right of nations in this respect, yet

when the productions of one nation are received at lower duties, than the like productions of another, the discrimination will scarcely fail to awaken desires and to produce dissatisfaction from their disappointment.

Again, unless we are prepared, at the expense of the whole to procure advantages or privileges for a part of the community, we shall doubt the policy of such stipulations. Between two manufacturing nations, in each of which the manufactures have attained to great perfection—a tariff of duties may be established by treaties, in the payment of which the manufactures of the two countries might be freely exchanged and mutually confirmed; such was the commercial treaty between France and Great Britain in the year 1786. But the subject was so intricate and involved such a variety of apparently independent circumstances, such as the price of provisions, the amount and the manner of levying of the taxes, and the price of the raw materials employed in their respective manufactures, that neither part felt entire confidence in the equity and reciprocity of the treaty: and with all the skill in negotiation, that France in a superior degree has been supposed to have possessed, the opinion of that nation has finally been, that the treaty was burdensome and disadvantageous to them.

We have another specimen of this species of treaty in a short convention between England and Portugal, concluded in 1703—the object was to procure a favorable market for dissimilar commodities, and such as were not the common production of the two countries. But this treaty, which has been so much applauded, is essentially defective in point of reciprocity. England agrees to admit the wine of Portugal on payment of two-thirds of the duty that shall be payable on French wines—and in return, Portugal agrees not to prohibit the English woollens. She does not agree to receive them exclusively of the woollens of other countries, nor to admit them on payment of lower duties. The advantage therefore is manifestly on the side of Portugal. By the treaty of commerce between France and Great Britain, concluded in 1786, it was agreed, that the wines of France imported into Great Britain should pay no higher duties than those which the wines of Portugal then paid: The consequence must have been a reduction, without compensation or equivalent from Portugal, of the existing duties on the wines of that country brought into Great Britain, equal to one-third of the amount of such duties. This is an instance of inconvenience and loss, resulting from the species of treaties, which it is alleged as an objection to the treaty concluded between us and

Great Britain, that we are prevented by it from making with other nations.

A small compact nation, likewise, who excel in some one species of manufacture, that is established throughout their territory, and in the conducting and success whereof there is a common interest, may find it useful to procure the exclusive supply of some foreign market: provided, in this as in all other bargains, the compensation shall not be too high. But in a nation like ours, composed of different states, varying in climate, productions, manufactures, and commercial pursuits, it will be more difficult to enter into treaties of this kind. Should Great Britain, for example, be inclined to admit our fish-oils freely, or on payment of low duties on condition that we would receive their woollens or hardware freely or on payment of low duties—would the middle and southern states be satisfied with such a treaty?—would they agree to a tax on their estates sufficient to supply the deficiency in the revenue arising from the relinquishment of the impost on British woollens or hardware? Would it not be said, that such a tax was a bounty out of the common treasury, on a particular branch of business pursued alone by a portion of the citizens of a single state in the union? Instances might be multiplied in the illustration of this subject; but they will readily occur to every man who will pursue a little detail in his reflections. We have once made an experiment of this kind—its fate should serve as a caution to us in future. By the eleventh and twelfth articles of our treaty with France, it was agreed, that France should never impose any duty on the melasses that we should export from the French West Indies; and in compensation of this exemption, that we should never impose any duty on the exportation of any kind of merchandize by Frenchmen, from our territories, for the use of the French West Indies. These articles produced much dissatisfaction in congress: It was said to be a benefit that would enure to the use and advantage of only a part, but which must be compensated by the whole. Those arguments which will show themselves in future, should similar conventions be formed, were displayed on this occasion. The treaty was ratified, congress applied to the king of France to consent to annul these articles—this request was granted—and the articles were, by the several acts of the parties, annulled.

Not only the few instances of the existence of these treaties among the nations, added to the peculiar difficulties which we must meet in their formation, should lead us to doubt their utility, but also the opinion of our own country, which, if ex-

plicit on any point, has been repeatedly so in the condemnation of this species of national compact.

The introductory article of our commercial treaty with France, asserts, that the parties willing to fix on an equitable and permanent manner, the rules which ought to be followed relative to their correspondence and commerce “have judged that the said end could not be better obtained, than by taking for the basis of their agreement the most perfect equality and reciprocity, and by carefully avoiding all those burdensome preferences which are usually sources of debate, embarrassment and discontent.”

The same language is employed in our subsequent treaties with Holland and with Sweden; the public voice is unequivocal on this subject.

On the whole, the more closely this question is examined, the more doubtful will the policy appear of our entering into treaties of this description. We shall have to encounter not only the intrinsic difficulties that always attend a fair and precise adjustment of the equivalents, together with the national discontents that proceed from errors on this point; but moreover a still greater embarrassment from the circumstance that our great staple exports are not the common productions of the whole union, but different articles are peculiar to different parts thereof. If, notwithstanding, our government shall discover an instance in which, consistent with the common interest and sound policy, such a treaty might be desirable, we have scope sufficient to form it without incurring loss or disadvantage by the operation of our treaty with Great Britain.

CAMILLUS.

No. XXIX.

THE sixteenth article is entirely conformable to the usage and custom of nations. The exchange of consuls had already taken place between us and Great Britain; and their functions and privileges being left to the definition of the law of nations, we shall be exempt from those unpleasant controversies that too often arise from special conventions, which enlarge the consular privileges, power, and jurisdiction.

The agreement that either party may punish, dismiss, or send back a consul for illegal or improper conduct, is calculated to prevent national misunderstandings, and to secure a respect-

ful deportment in the consular corps. I have not observed that this article has been disapproved of from any quarter.

The seventeenth article which respects the capture and detention of the vessels of the parties on just suspicion of having on board enemy's property, or contraband of war, has been the object of intemperate censure—with how much justice it shall be the business of this paper to examine.

The principal complaint, is not, that the article exposed our own property to loss by capture, for this is not the case, but that it does not protect enemy's property on board our vessels. The defence of the article will rest upon the proofs which shall be exhibited, that it is in conformity with, and supported by, the clear and acknowledged law of nations—that law which pronounces that enemy's goods on the high seas are liable to capture, and as a necessary mean to this end, that neutral ships are there liable to examination or search.

The law of nature (as heretofore observed) applicable to individuals in their independent or unsocial state, is what, when applied to collections of individuals in society, constitutes the natural or necessary law of nations. An individual in a state of nature, for reparation of injuries, or in defence of his person and property, has a right to seize the property of his enemy, and to destroy his person.

Nations always succeed to the rights that the individuals who composed them enjoyed in a state of nature: and hence it is that by the law of nations, from the earliest annals of society, the goods or property of one enemy has been considered as liable to be seized and applied to the use of another. This right must be so used as not to injure the rights of others: Subject to this limitation, it is perfect, and an interruption of it by another is an injury. As in a contest between two individuals in a state of nature, no third has a right, without becoming a party in the controversy, to protect the property, or defend the person of either of the parties: So in a war between two nations no third nation can act out of its own jurisdiction, consistent with the duties of neutrality; or, without becoming a party in the war, protect the property of, or defend either of the parties. Though nations are, in respect to each other, like individuals in a state of nature, the resemblance is not in every particular perfect.—Individuals in a state of nature have not only the inferior dominion or private ownership of property, but the entire and perfect dominion over it. In society the latter right belongs exclusively to the nation, while the former belongs to the several members that compose it. Immoveable things, such as lands, which are denominated the territory

of a nation, are the immediate and special objects of this perfect dominion or paramount property. Moveable things are the proper objects of inferior dominion or private ownership, and are no otherwise the objects of the national or paramount property than as they happen to be within its territorial limits. The perfect dominion, or jurisdiction of a nation, in respect to property, extends over, and is bounded by, the lands thereof and the waters appurtenant to the same.

As soon, therefore, as moveable things pass out of these limits, they cease to be under the dominion or jurisdiction of the nation, the private property of whose members they may be.

This private property, in moveable things, may be enjoyed within the territory of a nation, by those who are not members thereof. Hence in a war between two nations, a member of one of which owns moveables within the territory of a third or neutral nation, such moveables or property are not liable to seizure by reason of the war; because, being within and under the exclusive jurisdiction of a third nation, it would be an injury to the right of such nation to go there and seize the same. So long as such moveables remain within a foreign territory, they are objects of its dominion and protection; but as soon as they are carried out of the same, they cease to be any longer under its jurisdiction or protection.

In a war between two nations, all the members of each are enemies to the other, and all the property of the several members, as well as the strictly national property, is liable to seizure. In general the character of the owner, whether enemy or friend, decides whether property is liable to capture by reason of war; but the validity of the capture depends not only on the goods being enemy's property, but likewise on the fact that the place of capture is one in which the right may be exercised without injury to the rights of a neutral nation. Hence the property of an enemy is liable to capture only within the respective territories or jurisdiction of the belligerent nations, or in a place not within the territory or jurisdiction of any nation. In either of these places the right may be exercised without injury to the rights of neutral nations—The limitation of this right, so far as respects enemy's property found within the territory of one of the parties on the breaking out of war, has before been discussed and placed, I flatter myself, on solid principles.

The main ocean not being within the territory, or subject to the exclusive dominion of any nation, is a place, where enemy goods may lawfully be captured. An impediment by

any third nation to the exercise of the right of capture on the ocean by either of the belligerent parties, would be an injury.

As the goods of an enemy, within the territory of a neutral state, are under the protection thereof, the law of nations, for the reasons that have been stated, will not permit us to take them: in like manner, we have no right to take them if they are on board a ship, whilst the ship is in a neutral port, whether the ship itself is a neutral one, or belongs to an enemy, because the port is a part of the territory.—When the goods of an enemy are on board the ship of an enemy, and the ship is in the main ocean, there is no doubt of our right to capture both the goods and the ship, because they are then in a place which is not the territory of any nation. But when the goods of an enemy are on board a neutral ship, and the ship is in the main ocean, though we have a right to take the goods, we have no right to take the ship, or to detain her any longer, than is necessary to obtain possession of the goods—for the ocean itself is no territory—and neutral ships, as they are moveable goods, can not be parts of the neutral territory; and consequently are no more under the protection of the neutral state, than the same goods would be, if they were passing through an unoccupied country in neutral carriages, or on neutral horses.

A neutral ship (says Rutherford in his institutes, whose reasoning on this question I adopt) may indeed be called a *neutral place*; but when we call it so, the word *place* does not mean territory, it only means the thing in which the goods are contained. Though the goods of the enemy had been on board a ship belonging to the enemy, we might have said, in the same sense, that they were in a neutral place, if they had been locked up there in a neutral chest. But no one would imagine, that such a neutral place, as a chest, can be considered as a part of the territory of the neutral state, or that it would protect the goods. Notwithstanding, a neutral chest is as much a neutral place as a neutral ship.

A ship, though a moveable thing, is under the jurisdiction of a nation whilst it continues in one of its ports—but as soon as it is out at sea, only the private ownership, or inferior dominion, of the ship remains, and it ceases to be under the dominion or jurisdiction of the nation. The case will be the same, if, instead of supposing the ship to be the property of a merchant, we suppose it to be the property of the nation.

For though we cannot well call the property which *the nation* has in such a ship, by the name of private ownership: yet, when the ship comes into the main ocean, the jurisdiction or

paramount property ceases, and the right that remains is an inferior kind of property, which has the nature of private ownership. If the jurisdiction, which a neutral state has over the ships of its members, or even over its own ships, ceases when the ships are out at sea; the goods of an enemy, that are on board such ships, cannot be under the protection of the nation, in the same manner as if the ships had been in one of its ports, or as if the goods had been on its land.*

Notwithstanding a neutral nation, when its ship is in the main ocean, has no jurisdiction over the ship itself, as if it was a part of its territory, yet the nation, or some of its members, which is the same thing, will continue to have the inferior sort of property, or ownership in it. This species of property will protect the ship from capture, though the enemy's goods on board her may lawfully be taken.

But here a difficulty occurs—This inferior kind of property, called private ownership, to distinguish it from the jurisdiction over things, is an exclusive right; those who have such ownership in things, whether private or public persons, have a right to exclude all others from making use of such things; and by this means, the rights of others are often hindered from taking effect.

Wild beasts, birds, and fishes, are, till they are caught, in common to all mankind; and I, in common with others, have a right to take them, and thereby to make them my own—But I cannot hunt, or shoot, or fish, without perhaps sometimes using the soil or water of another man; and as I have no right to use these without his consent, he may justly hinder me from doing any of these acts, as far as his right of property extends. Thus by private ownership I am prevented from taking such things, as I should otherwise have a right to take, if they did not happen to be in such places as he had an exclusive right to. In like manner, though I have a right to take the goods of my enemy, when they are out at sea, yet may not the effect of this right be prevented by the inferior property or ownership, which a neutral nation, or its members, have in the ship in which the goods are? If the law of nations is nothing but the law of nature applied to the collective persons of civil societies, instead of saying that the law of nations has decided otherwise, we should disclose a natural reason why it should determine

* The jurisdiction here spoken of is relative to property, and altogether distinct from what is termed personal jurisdiction, which respects the relations between the society and its members—This latter species of jurisdiction is not confined to the territorial limits of a nation.

otherwise. When I have merely a right to acquire property in a thing that is common to all mankind, but cannot do it without the use of what is already the property of some other man; this man neither does me an injury, nor encourages or protects others who have injured me, by excluding me from the use of what belongs to him. But when we have a right in war, upon account of the damage which the enemy has done us, to take goods of the enemy, and these are in a neutral ship: if the neutral state, though it has property in the ship, should make use of its right of property to protect the goods against us, this protection makes it an accessory to the injury, which is the foundation of the claim upon the enemy to obtain reparation of damages, and consequently is inconsistent with the notion of neutrality.

But whilst this answer removes one difficulty, it brings another. If a neutral nation makes itself accessory to the damages done by the enemy, by protecting such enemy goods as she has a right to take for reparation of damages, when these goods are out at sea in one of its ships: Why might the same nation, without becoming in like manner an accessory, protect the same goods when the ship is in one of its ports, or when the goods are on land within its territory? A law of nations, which is natural as to the matter of it, and positive only as to the objects of it, will furnish an answer to this question.

Every state has, by universal acknowledgment and consent, by the law of nations, an exclusive jurisdiction over its own territory. As long, therefore, as a state keeps within its own territory, and exercises its jurisdiction there, the protection in question is not a violation of our rights—but when its ships are in the main ocean; as they are then in a place out of its territory, where, by the law of nations, it has no jurisdiction, this law will allow us to take notice of the protection, which it gives to the goods of an enemy, and to consider it as an accessory to the damages done by the enemy, if it gives them protection.

In respect to the right of examination or search, if the end is lawful, and the examination or search a necessary mean to attain this end, the inference is inevitable, that the examination or search is likewise lawful.

If the question, whether enemy goods are seizable on board a neutral ship, were really doubtful; yet the right to search neutral ships must be admitted for another reason. All agree that arms, ammunition and other contraband articles, may not be carried to an enemy by a neutral power—without searching vessels at sea, such supply could not be prevented. The right

to search, therefore, results, likewise, from the right to seize contraband goods. Again, the state of war authorizes the capture of enemy ships and goods—But on the main ocean, which is the great high-way where the ships and goods of all nations pass; how are the ships and goods of an enemy to be distinguished from those of a friend? No other way than by examination and search. Hence then the right of search is deducible from the general right to capture the ships and goods of an enemy.

It would undoubtedly disembarass the commerce of neutral nations were passports and ships papers received, in all cases, as conclusive evidence of the quality and property of the cargo. And did treaties, in fact, effectually secure an exemption from rude and detrimental inquisitions upon the ocean, they would become objects of inestimable worth to the neutral powers. But, notwithstanding the existence of stipulations in our other treaties which aim at giving some force to similar credentials, can it be said, that our ships have been visited with less ceremony, by one party, than by the other? And may not the experience of other nations, as well as that of our own, be appealed to, in proof of the opinion, that these stipulations, however exact and positive, are too little regarded by that class of men, to restrain and govern whose conduct they are instituted?

The right of search ought to be used with moderation, and with as little inconvenience as possible to the rights of nations not engaged in the war. And the law of nations, on the other hand, requires the utmost good faith on the part of the neutral powers. They are bound not to conceal the property of the enemy, but on the contrary, to disclose it when examination shall be made; in confidence of this impartiality, the law of nations obliges the powers at war to give credit to the certificates, bills of lading and other instruments of ownership, produced by the masters of neutral ships, unless any fraud appear in them, or *there be good reason for suspecting their validity*. The right of search is always at the peril of those who exercise it; the right, notwithstanding, must be acknowledged to be indubitable.

The reasoning employed to prove that all neutral ships, on the main ocean, are liable to search, and enemy goods on board them to capture, is supported by the ablest writers on public law, and their decision is believed to be unanimously in its favor.

The Italian states were the first among modern nations, who cultivated the interests of commerce, and before the passage of

the Cape of Good Hope, Venice and Genoa, distributed the manufactures of Asia throughout Europe. They, therefore, first defined the rights of navigation. Their maritime regulations are collected in a work called "Consolato del Mare;" I do not possess the collection, but find the following quotation from it in Grotius.*

"If both the ship and freight belong to the enemy, then, without dispute, they become lawful prize to the captor; but if the ship belong to those that be at peace with us, and the cargo be the enemy's, they may be forced by the powers at war, to put into any of their ports, and unlade; but yet the master must be *satisfied for the freight of them.*"

Grotius, that learned, and persecuted friend of liberty, whose life and great talents were dedicated to the service of mankind, and who displayed so much ability and learning in defending the freedom of the seas, and of commerce, is clearly of opinion, that enemy goods are not protected by neutral bottoms; he even goes farther, and allows that *such property* occasions great presumption, that the vessel is, likewise, enemy property.† Bynkershook is of the same opinion.‡ Puffendorf|| and Heinecius § agree in this law, and Vattel who is the latest writer, is explicit in his opinion; "without searching neutral ships at sea," says he, "the commerce of contraband goods cannot be prevented—There is then a right of searching. Some powerful nations have, at different times, refused to submit to this. At present a neutral ship refusing to be searched, would, from that proceeding alone, be condemned as lawful prize." "Effects belonging to an enemy, found on board a neutral ship, are seizable by the rights of war; but by the law of nature, the master is to be paid his freight, and not to suffer by the seizure. The effects of neutrals, found on board an enemy ship, are to be restored to the owners, against whom there is no right of confiscation."

Other authors of respectability might be quoted; but those already named will be acknowledged as the ablest, and their authority the most decisive of any that can be cited—so strong, clear and uninterrupted, are the authorities of the writers on

* Grotius. Book 3, chap. 1, sect. 5, Note.

† Grotius. Book 3, chap. 4, sect. 8—Book 3, chap. 6, sect. 6.

‡ Bynkershook, quest. jur. pub. lib. 1, cap. 13 and 14.

|| Puffendorf.

§ Heinecius de navibus cap. 2 sect. 114, 115, 116.

public law in relation to these points, that the advocates of an opposite rule, may be challenged to produce a single authority of approved respectability in support of their opinion. *

CAMILLUS.

No. XXX.

ADMITTING that it was the law of nations that enemy's goods might be seized in neutral ships, it is alleged by Cato and other writers, who have appeared on the same side, that the treaties which have been formed between nations have annulled this law, and established another in its stead, equally extensive and binding on the whole civilized world.

In discussing this allegation, we should remember, that all nations are in a state of equality, and independent of each other. No law, other than the necessary or natural law of nations, is binding on any nation without its consent, expressly or tacitly given. A law among nations cannot, like a civil or municipal law, be annulled, or enacted by a majority, or any portion short of the whole. By agreement between two or more nations, the operation of a law already in existence, may be suspended so far as respects themselves; but such agreement works no change of such law, in relation to the rights or duties of other nations. The same is true of any rule of action, established by convention between two nations; such rule is obligatory on the parties that form the contract, but is wholly without effect and nugatory in respect to all other nations. Unless then all nations have concurred in the design to annul this law, it must still exist; and treaties containing opposite stipulations, can be considered in no other light, than as exceptions to the same, in which certain nations have seen it their interest to agree.

'Tho' one nation may have agreed with another to suspend the operation of this law, and to substitute the rule that free ships make free goods, and enemy ships enemy goods, there may have been some peculiar reason that induced the parties to form this convention with each other, that would not apply in respect to any other nation.

A nation may advance its interest perhaps by forming such a treaty, with one nation, and injure it by forming it with

* This subject will be resumed and pursued under different aspects in another number.

another—Because a nation has, in some instances, or for a limited time, formed stipulations of this sort, it cannot from thence be inferred, that it has thereby, in any sense, expressed its consent to a total repeal of a law, the operation of which it has agreed to suspend only for a limited time, and in respect to a particular nation. Commercial treaties, in which we discover these stipulations, though not always, are commonly limited in their duration. This limitation is a strong argument against the doctrine which these treaties are cited to establish. For so many years, say the parties, we will suspend the operation of the law. When the treaty expires by its proper limitation, or is dissolved by war, the rule of the treaty ceases, and the law is again in force between the parties, and prescribes to them, in common with other nations, their rights and duties in this respect.

The law of nations, that authorizes the capture of enemy goods in neutral ships, requires the restoration of neutral goods captured in enemy ships: The treaties, which stipulate that free ships make free goods, stipulate also that enemy ships make enemy goods. I have discovered no instance of the former stipulation, that has not been accompanied by the latter: though I have found instances of the latter stipulation unaccompanied by the former.—This is the case in the treaty of peace, commerce and alliance between Spain and England, concluded at Madrid in 1667. Those, therefore, who contend that the law of nations has been repealed in one instance, must also insist that it has been repealed in the other.—If the number of stipulations is to be received as evidence, the proof is stronger of a repeal in the latter than in the former case.—But will any one seriously maintain, that a nation would have a right to confiscate the goods of a neutral power found on board an enemy ship, without an express stipulation on the part of such neutral state consenting to the same?—Would England or Spain, for example, have a right to confiscate American property captured in a French ship? Would America, if at war, have a right to confiscate the neutral property of Spain, Portugal, Denmark, or Russia, found on board an enemy ship? Has any nation ever confiscated property under this circumstance? If not, the inference is clear, that these stipulations are exclusively relative to the parties who form them, and that the rights of other states remain under the protection of the law of nations.

But according to Cato, this reasoning may be just, yet inapplicable; for he maintains that *all nations* have consented to the establishment of this conventional law. “As far back as 150 years,” says this writer, “and ever since, I find that the com-

mercial nations have stipulated in their treaties, that free ships shall make free goods, that full credit shall be given to ships' papers, and that armed vessels shall not come within cannon shot of a neutral ship, but send their boats on board with only two or three men at most, to examine papers, but *not to search*, and that the treaties (by which is understood all the treaties) for 150 years back, relative to this object, are drawn in the words of the treaty between the United States and France."

Struck with the fulness of this assertion, I have carefully examined such collections of treaties, as I have been able to procure, and going back to the year 1645, I have given a patient search to all the public conventions between Great Britain and the several powers of Europe since that period. I find, that since that epoch, Great Britain has concluded commercial treaties with Spain, Portugal, France, Holland, Dantzic, Denmark, Sweden, and Russia.

In the treaties with Holland and with France, she has agreed to the stipulation, that free ships should make free goods, and enemy ships, enemy goods. In *Chalmers's* collection of treaties, a similar stipulation is contained in the 23d article of the treaty of alliance, concluded in 1564, between Oliver Cromwell and the king of Portugal; but in other collections, in which that treaty is found, it does not contain a stipulation that free ships shall make free goods; and it has been denied, from a reputable quarter on the part of Great Britain, that she has acceded to this principle, except in the instances of her treaties with Holland and France; neither of which exist any longer, the former having expired long since, and the latter being dissolved by the present war. Her treaties with Spain, Dantzic, Denmark, Sweden, and Russia, do neither of them contain this stipulation. On the contrary, the 12th article of the treaty with Sweden, and the 20th of the treaty with Denmark, each of which is now in force, and has been so for more than a century, as likewise the 14th article of the treaty with Dantzic declares, that "lest the enemy's goods and merchandize should be concealed under the disguise of the goods of friends, it is stipulated, that all ships shall be furnished with passports and certificates, by which it shall be manifest to whom the articles, composing the cargoes, belong:" and the two first of these treaties, moreover, declare it "to be injurious to protect the property of enemies," and establish special guards to prevent the same.

In relation to the full credit to be given to ships' papers, and the manner of boarding neutral vessels,—in the treaties with

Spain, France, and Holland, it is stipulated, that full faith shall be given to the passports, and that the boarding shall be by two or three men only. But the treaties with Portugal and Russia are destitute of any stipulation on this subject, except that in the latter it is agreed,* that “the searching of merchant ships shall be as favorable as the reason of the war can possibly admit, toward the most favored neutral nation, observing, as near as may be, the principles of the law of nations that are generally acknowledged.” † In the treaties with Dantzic, Denmark, and Sweden, passports are required for the purpose of distinguishing, according to the solemnities of those treaties, the enemy property on board the ships of the parties; and it is stipulated, that credit shall be given to such passports, except in cases of just and urgent cause of suspicion, when, say these treaties, the ship ought to be searched; an exception, that fully recognizes the right to search, essentially does away the security intended by the passports. But neither of these treaties contain any regulation relative to the manner of boarding neutral vessels.

This research, though made with care, may have been imperfect; the result thereof is, that there are only two, possibly three, of these eight nations, with whom Great Britain has ever agreed to the stipulation, that free ships shall make free goods; only three of them with whom she has stipulated, that full credit shall be given to passports or ships’ papers, or with whom the manner of boarding is settled. Instead, therefore, of that uniformity and universality in the stipulations in the commercial treaties, concluded within the last 150 years, so confidently asserted by Cato, we see that in five instances out of eight, of treaties concluded between Great Britain and the principal powers of Europe, within that term, they have on each of these points, given their sanction to a law directly in opposition to the assertion of this adventurous writer.

Yet, says Cato, “the principles of the armed neutrality, by the general consent of the great community of the civilized world, changed the law of nations.”—It is a singular logic that proves the agreement of nations by their disagreement, and their consent to a principle, by their drawing forth their fleet to dispute it. The armed neutrality, with those who understand its history, will not be relied on by way of proving a change in the law of nations, brought about by universal consent.

* Treaty of 1776, article 10.

† Treaty with Dantzic of 1706, article 20.

It will not be denied that this league, which was aimed principally against Great Britain, failed to accomplish its purpose, and that it expired with the American war. Nothing has been heard of it during the present war; and it is notorious, that Russia, and Holland before its conquest, were under agreements incompatible with the views of that association. The northern powers of Europe under the countenance of France, united to support the principles of the armed neutrality; but the league did not include all the neutral powers; and of the powers engaged in the war, at that period, Spain consented to observe the principles contended for by the confederacy, on condition that Great Britain would agree to them, who, so far from agreeing, openly resisted them.

On the same principle, by which it is contended that this association introduced a new law of nations, might the armed leagues between certain nations to prohibit all commerce whatever with an enemy, be appealed to in proof of an alteration of the law of nations in this respect. England and Holland entered into such a league against France, in the year 1689; and other instances are mentioned by Grotius; yet no one has ever imagined that thereby any change was wrought in the law of nations.

The objection that has arisen from the dissimilarity between this article and those relative to the same subject in our other treaties, is equally defective with those already considered. The objection proceeds from an opinion that the law of nations has been changed, and that the stipulations in our other treaties are evidence thereof. The observations that have been offered on this subject, are equally applicable to this objection, and it is therefore unnecessary to repeat them.

Not only reason, and the authority of jurists, but likewise the practice of nations, where they have been unrestrained by particular conventions, may be appealed to in support of this doctrine.

The practice of France, of Holland, even subsequent to particular stipulations, regulating this subject between themselves, has, in respect to other powers, been conformable to the law of nations.—The ordinances and maritime decisions of France may be consulted to show what her practice has been, and that of Holland is evident by the convention of 1689, between her and England. The practice of Spain is understood to be the same; and in an instance that occurred during the American war, she carried the law to its utmost rigour, in assigning as a cause of condemnation of a neutral Tuscan ship, her forcible resistance of the right of search. Her capture of American

ships, during the present war, on suspicion of their cargoes being enemy property, affords additional evidence of her practice and opinions on this subject. In respect to Great Britain, from the general notoriety of the fact, it seems, in some sort, unnecessary to add, that she has immemorially adhered, in her general practice, to the law of nations in its widest interpretation on this subject. In a few instances, and perhaps for special reasons, as was the case in respect to the treaty with Holland, concluded in 1667, she has entered into opposite stipulations; but at this time, unless it may be with Portugal, Great Britain has no such treaty with any nation.

So undisputed was the law on this subject, and so uniform the practice of nations in cases, not governed by a conventional rule, that congress, in the commencement, and through the greater part of our revolution war, authorized our ships of war and privateers, to capture enemy property on board neutral ships, and our admiralty courts uniformly restored neutral property found on board enemy ships. This practice continued years after the conclusion of our treaty with France, which contains a stipulation, that free ships shall make free goods, and enemy ships enemy goods; no person, during that period, having supposed that thereby the law was altered in respect to other nations.

Towards the close of the war, to favor the views of the armed neutrality, in which league the United States were not a party, but whose opposition to Great Britain they naturally approved; congress, in an ordinance on the subject of captures, ordained that neutral bottoms should protect enemy goods—but here they stopped. Thus far the authority was indubitable, because it was exercised only in abridgment of their own rights. Being engaged in war, they could not by their own act, enlarge their rights, or abridge those of neutral ships; the extent of both being defined and settled by the public law of nations. They, therefore, never authorized the capture and condemnation of neutral goods found in enemy ships, nor could they have authorized the same, without a manifest violation of the rights of the neutral powers.

It is finally alleged that the article, if found in its principles, is defective in those provisions which are requisite to protect and secure the neutral rights of the parties; inasmuch as it does not contain an explicit stipulation for the payment of freight on enemy goods, nor for the payment of damages for the detention or loss of neutral ships taken without just cause. I do not recollect to have met with any precise stipulation on these points, in the commercial treaties between other nations.—None such,

if my recollection be right, are found in any of our other treaties; and I think it would be somewhat difficult to form such as would afford to the parties a more satisfactory security than that which arises from the law of nations—a neutral ship is entitled to freight for enemy goods captured on board her; but this right, if so admitted, may be forfeited by the irregular conduct of the neutral, by the possession of false or double papers, by the destruction of papers, or by those fraudulent concealments and evasions, which are inconsistent with fair and impartial neutrality. A ship taken and detained without just cause, is, together with her cargo, at the risk of the captors from the moment of capture; and in cases of partial or total loss, or of damages by detention, the owner is entitled to full and complete indemnification. But in case the neutral ship is under such equivocal and doubtful circumstances, as afford probable cause to believe that either the ship, or cargo, is enemy property, a situation not to be reconciled with an open and fair neutrality, *in such case*, though on trial both ship and cargo should turn out to have been bona fide neutral property, yet the captors may avail themselves of her equivocal situation and character, in mitigation, if not, under very peculiar circumstances, in total discharge of damages. No stipulation, therefore, without these exceptions, would have afforded to the parties adequate security against such irregularities, and with them, its want of precision would have left the subject as it now stands, to be regulated by the known and approved provisions of the law of nations.

These provisions being well understood, the article concludes with a stipulation against delays in the admiralty, and in the payment and recovery of the damages it shall decree.

This examination, I flatter myself, has fulfilled its object, which was to prove, that the article relinquishes no right that we possessed as a nation, that it is agreeable to, and supported by, the law of nations. A law in relation to this subject, coeval with the origin of maritime commerce, and the principles whereof have immemorially operated among nations.

It was desirable that a stipulation, similar to that contained in our other treaties, should have been obtained. But the time was unfavorable to the attainment of this object: and, as with great propriety has been observed by Mr. Jefferson, in behalf of our government—"since it depends on the will of other nations as well as our own, we can only obtain it, when they shall be ready to consent." By the 12th article, the parties agree to renew the negotiation on this point, within the com-

pass of two years after the conclusion of the present war ; when perhaps the restoration of peace, and other circumstances, may prove more propitious to our views.

C A M I L L U S.

No. XXXI.

I RESUME the subject of the two last papers for the sake of a few supplementary observations.

The objections to the treaty, for not containing the principle, "that free ships make free goods," as being the relinquishment of an advantage, which the modern law of nations gives to neutrals, have been fully examined, and, I flatter myself, completely refuted.

I shall, however, add one or two reflections by way of further illustration. A pre-established rule of the law of nations, can only be changed by their *common consent*. This consent may either be express, by treaties, declarations, &c. adopting and promising the observance of a different rule, or it may be implied, by a course of practice or usage. The consent, in either case, must embrace the great community of civilized nations. If to be inferred from treaties, it must be shown that they are uniform and universal. It can, at least, never be inferred, while the treaties of different nations follow different rules, or the treaties between the same nation and others, vary from each other. So also as to usage. It must be uniform and universal, and, let it be added, it must be continued. A usage adopted by some nations, and resisted by others, or adopted by all temporarily and then discontinued, is insufficient to abolish an old, or substitute a new rule of the law of nations. It has been demonstrated, that no consent of either description has been given to the rule, which is contended for in opposition to the treaty.

The armed neutrality, so much quoted, is entirely deficient in the requisite characters. Its name imports that it was an armed combination of particular powers. It grew up in the midst of a war, and is understood to have been particularly levelled against one of the belligerent parties. It was resisted by that power. There were other powers, which did not accede to it. It is a recent transaction, and has never acquired the confirmation of continued usage. What is more, it has been virtually abandoned by some of the parties to it—and among

these, by the principal promoter of it, the politic and enterprising Catharine. It is, therefore, a perversion of all just ideas, to ascribe to such a combination the effect of altering a rule of the law of nations.

In most important questions, it is remarkable that the opposers of the truth are as much at variance with each other as they are with the truth they oppose. This was strikingly exemplified when the present constitution of the United States was under deliberation. The opposition to it was composed of the most incongruous materials—the same thing is observable in relation to the treaty.—And one instance of the contrariety applies to the rule cited above.

While some of the adversaries of the treaty complain of the admission of a contrary principle by that instrument, as the abandonment of a rule of the present law of nations; others, conceding that there is no such rule yet established, censure that admission as a *check* to its *complete* and *formal establishment*, and as a retrograde step from this desirable point.

The objection in this form is more plausible than in the other, but it is not less destitute of substance. If there has been any retrograde step, it was taken by the government prior to the treaty—authentic documents, which have been communicated by the executive to congress, contain the evidence of this fact.

Early in the year 1793, some British cruisers having stopped vessels of the United States, and taken out of them articles which were the property of French citizens, Mr. Genet, the then minister of France, in a letter of the 9th of July of that year, made a lively representation upon the subject to our government, insisting, in a subsequent letter of the 25th of that month, in which he recurs to the same point, that the principles of neutrality established, that friendly vessels make friendly goods; and in effect, that the violation of this rule by Great Britain was a violation of our neutral rights, which we were bound to resent.

The reply of our government, is seen in a letter from our secretary of state to that minister, of the 24th of July—It is in these terms—"I believe," says Mr. Jefferson, "It cannot be doubted, but that by the general law of nations, the goods of a friend, found in the vessel of an enemy, are free, and the goods of an enemy, found in the vessel of a friend, are lawful prize. Upon this principle, I presume, the British armed vessels have taken the property of French citizens found in our vessels in the cases above mentioned; and, I confess, I should be at a loss on what principle to reclaim them. It is true that

fundry nations, desirous of avoiding the inconveniencies of having their vessels stopped at sea, ransacked, carried into port, and detained under pretence of having enemy goods on board, have, in many instances, introduced, by their special treaties, another principle between them, that enemy bottoms shall make enemy goods, and friendly bottoms friendly goods; a principle much less embarrassing to commerce, and equal to all parties in point of gain and loss; but this is altogether the effect of particular treaty, controuling, in special cases, the general principles of the law of nations, and, therefore, taking effect between such nations only as have so agreed to controul it."

Nothing can be a more explicit or unequivocal abandonment of the rule, that free ships make free goods, and *vice versa*, than is contained in this communication. But this is not all: In the letter, from Mr. Jefferson to our minister in France, of the 26th of August, 1793, instructing him to urge the recall of Mr. Genet, the subject is resumed, the position asserted in answer to Mr. Genet, insisted upon anew, and enforced by additional considerations: Among other suggestions, we find these, "We suppose it to have been long an established principle of the law of nations, that the goods of a friend are free in an enemy's vessel, and an enemy's goods lawful prize in the vessel of a friend. The inconvenience of this principle has induced several nations latterly to stipulate against it by treaty, and to substitute another in its stead, that free bottoms shall make free goods, and enemy bottoms, enemy goods. We have introduced it into our treaties with France, Holland, and Russia; and French goods, found by the two latter nations in American bottoms, are not made prize of. It is our wish to establish it with other nations:—But this requires their consent also, is a work of time, and, in the mean while, they have a right to act on the general principle, without giving to us or to France, cause of complaint. Nor do I see, that France can lose by it on the whole—For though she loses her goods, when found in our vessels, by the nations with whom we have no treaties—yet she gains our goods when found in the vessels of the same and all other nations; and we believe the latter mass to be greater than the former."

Thus, then, stood the business antecedent to the treaty. Great Britain, adhering to the principle of the general and long established law of nations, captures French property in our vessels, and leaves free our property in French vessels. We acquiesce in this practice, without even a remonstrance or murmur. The French minister complains of it, as contrary to the principles of neutrality—We reply, that, in our opinion, it is not contrary to those principles—that it is fully warranted by the

general law of nations—that treaties, which establish a different rule, are merely exceptions to that law, binding only on the contracting parties; that having no treaty of the sort with Great Britain, we should be at loss on what ground to dispute the legitimacy of her practice. We do not simply forbear to oppose—We do not offer to France as an excuse for our forbearance, that it is inconvenient to us, at the moment, to assert a questionable right at the hazard of war—But we tell her peremptorily, that, in our opinion, no such right exists, and that the conduct of Great Britain, in the particular case, is justified by the law of nations—neither do we wrap the motive of our forbearance in silence, nor content ourselves with revealing it confidentially to France alone; but we publish it without reserve to the world, and thus, in the presence of Great Britain, and of every other nation, make a formal renunciation of the pretension, that “free ships shall make free goods, and enemy ships enemy goods:” no counter declaration is heard from either house of congress.

It was impossible to give a more full sanction to the opposite principle than was given by this conduct, and these public and positive declarations of our government. It was impossible more completely to abandon the favorite ground. It is puerile to attempt to discriminate between the force of this species of renunciation and that of an admission of its propriety by treaty. The conduct of a government avowed and explained, as to motives, by authentic public declarations, may assert or renounce a pretension as effectually as its compacts—Every nation, with whom we had no contrary stipulation, could say to us as well before as since the treaty with Great Britain, “your government has explicitly admitted that free ships do not make free goods, and you have no right to complain of our not observing that rule towards you.” Candour, therefore, would oblige us to say that the treaty has left this point where it found it—that it has only not obtained from Great Britain a concession in favor of an innovation upon the law of nations, which it is desirable to establish, but which cannot be claimed as matter of right. Though, therefore, it may not have the merit of strengthening, it has not the demerit of weakening the ground.

The difference in our position, in this respect, before and since the treaty, amounts to this, that before the treaty the government had abandoned the ground through one organ, Mr. Jefferson; by the treaty, it continued the abandonment through another organ, Mr. Jay—if we consider the organ as the voluntary cause in each case, (the presumption of which is equally fair in both cases) and if there be any blame, it falls more hea-

vily on Mr. Jefferson than on Mr. Jay; for the former founded and made the retreat, and the latter only did not advance from the disadvantageous post to which he had retreated. In other words, Mr. Jay did only not recover the ground which Mr. Jefferson had lost. And we know that, in general, it is a far more difficult task to regain than to keep an advantageous position.

But, in truth, no blame can justly be imputed in either case. The law of nations was against the rule which it is desired to introduce. The United States could not have insisted upon it as matter of right; and in point of policy it would have been madness in them to go to war, to support an innovation upon the pre-established law. It was not honorable to claim a right, and suffer it to be infringed without resistance. It is not for young and weak nations to attempt to enforce novelties or pretensions of equivocal validity. It is still less proper for them to contend, at the hazard of their peace, against the clear right of others. The object was truly not of moment enough to risk much upon it. To use a French proverb, "*The play was not worth the candle.*" In every view, therefore, it was wise to desert the pretension.

So also, in the midst of war, like that in which Great Britain was engaged, it were preposterous to have expected, that she would have acceded to a new rule, which, under the circumstances of her great maritime superiority, would have operated so much more conveniently to her enemy than to herself. And it would have been no less absurd to have made her accession to that rule the *sine qua non* of an arrangement, otherwise expedient. Here again *the play would not have been worth the candle.*

The importance of the rule has artfully been very much magnified, to depreciate proportionably the treaty, for not establishing it. It is to be remembered, that if something is gained by it, something is also given up. It depends on incalculable circumstances, whether, in a particular war, most will be lost or gained. Yet the rule is, upon the whole, a convenient one to neutral powers. But it cannot be pretended that it is of so great a value, as that the United States ought to adopt it as a maxim, never to make a treaty of commerce, in which it was not recognized. They might by this maxim forego the advantages of regulating their commercial intercourse in time of peace with several foreign powers, with whom they have extensive relations of trade, by fixed and useful conventional rules, and still remain subject in time of war to the inconveniencies of not hav-

ing established, with those powers, the principle to which they make that sacrifice.

Though, therefore, it be a merit to a certain extent in a treaty to contain this principle, it is not a positive fault or blemish, that it does not contain it. The want of it is not a good cause of objection to a treaty otherwise eligible.

Let me add, too, in the spirit of Mr. Jefferson's letter, that however it may be our wish to establish the rule with other nations besides those with whom we have already done it, this requires their consent also, of course their conviction, that it is their interest to consent; and that, considering the obstacles which lie in the way, the attainment of the object must be "*a work of time*." It pre-supposes, in some of the principal maritime powers, a great change of ideas, which is not to be looked for very suddenly. It was not, therefore, to have been expected of our envoy, that he was to have accomplished the point at so premature and so favorable a juncture.

The assertion, that he has abandoned it, is made in too unqualified a manner. For while he admits the operation for the present, of the general rule of the law of nations, he has, by the 12th article, engaged Great Britain in a stipulation, that the parties will, at the expiration of two years after the existing war, *renew their discussion, and endeavour to agree* whether in any, and what cases neutral vessels shall protect enemy's property. It is true, it will be in the option of Great Britain then, to agree or not: but it is not less true that the principle is retained with consent of Great Britain in a *negotiable* state. So far perhaps some ground has been retrieved.

I confess, however, that I entertain much doubt as to the probability of a speedy general establishment of the rule, that friendly ships shall make friendly goods, and enemy ships enemy goods. It is a rule against which, it is to be feared, the preponderant maritime power, to whatever nation this character may belong, will be apt to struggle with perseverance and effect, since it would tend to contract materially the means of that power to annoy and distress her enemies, whose inferiority on the sea would naturally cause their commerce, during war, to be carried on in neutral bottoms. This consideration will account for the resistance of Great Britain to the principle, and for the endeavours of some other powers to promote it—and it deserves notice, that her last treaty with France was severely assailed by some of the chiefs of opposition, for containing a stipulation in favor of that principle. The motive for consenting to it, in this instance, probably was, that the stipulation was likely to be rendered, in a great degree, nugatory by the relative situation

of the two nations, which, in almost any war in which one of the two was engaged on one side, would probably render the other a party on the opposite side.

If these conjectures be right, there is a reflection which lessens much the value of stipulations in favor of the rule; that so long as one or more of the maritime powers disavow it, there will be a strong temptation to depart from a scrupulous observance of such stipulations, as we, in relation to France, have experienced in the present war.

In the course of the arguments against the 17th article, for virtually admitting the right of search in time of war, the objectors have had the temerity to cite the opinion of *Vattel*, as being opposed to that right; and a mutilated quotation has given an appearance of truth to the assertion. It has been heretofore shown, by passages extracted from his work, that his opinion, so far from denying explicitly, supports the right to search. But it may be useful to examine the part of it which has been tortured into a contrary inference.

After affirming the right of search (B. 3. chap. 7, 8. 14) he proceeds thus, “but to avoid inconveniencies, violence, and every other irregularity, the manner of the search is settled in the treaties of navigation and commerce. According to the present *custom*, credit is to be given to certificates and bills of lading produced by the master of the ship.” Hence it is alleged the right to search is turned into the right of inspecting the ship’s papers, which, being entitled to credit, are to preclude further scrutiny.

But what immediately follows, destroys this conclusion! the words “unless any ground appear in them, or there be very good reasons for suspecting their validity,” are subjoined to the clause just quoted. This admits clearly, that the ship’s papers are not to be conclusive—But that, upon just cause of suspicion, the papers may be disregarded, and the right of search may be exercised.

Who is to be the judge of the credit due to the papers and of the just cause of suspicion? Manifestly the officer of the belligerent party, who visits the neutral vessel. Then what does the whole amount to?—Merely this—That ship’s papers are entitled to a certain degree of respect and credit; how much, is left to the discretion of the officer of the belligerent party!—who, if he be not satisfied of the fairness and validity of the papers, may proceed to their verification, by a more strict and particular search, and then if he still sees, or supposes he sees, just cause of suspicion, he may carry the vessel into a port of his own country, for judicial investigation—In doing this, he acts at his peril,

and for an abuse of his discretion exposes himself to damages and other punishment.

This is the true and evident sense of Vattel, and it agrees with the doctrine advocated in these papers, and, I will add, with the treaty under examination.

The 17th article admits, that the vessels of each party for *just cause* of suspicion of having on board enemy's property, or of carrying to the enemy contraband articles, may be captured or detained, and carried to the nearest and most convenient port of the belligerent party, to the end that enemy's property and contraband articles on board may become lawful prize. But so far from countenancing any proceeding without *just cause* of suspicion, or from exonerating the officer of the belligerent party from a responsibility for such proceeding, it leaves the law of nations, in this particular, in full force, and contemplating that such officer shall be liable for damages, when he proceeds without *just cause* of suspicion, provides that all proper measures shall be taken to prevent delay in deciding the cases of ships or cargoes brought in for adjudication, or in the *payment or recovery of any indemnification adjudged or agreed to be paid to the masters or owners of such ships*. Besides which, the 19th article stipulates, in order that more abundant care may be taken for the security of the respective subjects and citizens of the contracting parties, and to prevent their suffering injuries by the men of war and privateers of either party, that the commanders of ships of war and privateers, shall forbear doing any damage to those of the other party, committing any outrage against them; and that if they act to the contrary, *they shall be punished*, and shall also be bound in their persons and estates, *to make satisfaction and reparation for all damages, and the interest thereof, of whatever nature the said damages may be*. And further, after establishing that the commanders of privateers shall, before they are commissioned, give security to satisfy all damages and injuries, it adds, that in all cases of aggressions their commissions shall be revoked and annulled.

These provisions not only conform to, and corroborate the injunctions of the laws of nations: but they refute the assertion, that the treaty is altogether deficient in precautions for guarding neutral rights; since those above-mentioned are among the most efficacious.—It is not presumable that any stipulations have been or can be made which will take away all discretion from the marine officers of the belligerent parties; for this would be a total surrender of the rights of belligerent to neutral nations, and so long as any discretion is left, its right or wrong exercise will depend on the personal character of each officer:

and abuses can only be restrained by the penalties that await them. Those stipulations of treaties, then, which re-inforce the laws of nations as to the infliction of penalties, are the most effectual of the precautions which treaties can adopt for the security of neutral rights; and in this particular the treaty with Great Britain is to the full as provident as our other treaties. In one point I believe it is more so; for it expressly stipulates a revocation of the commissions of the commanders of privateers, for the aggressions they may commit.

Is not the passage last cited from Vattel a true commentary on those stipulations, for regulating and mitigating the right of search, which are found in our own and other treaties? Do they not all intend to reserve to the belligerent party a right of judging of the validity and fidelity of the papers to be exhibited, and of extending the search or not, according to the circumstances of just suspicion which do or do not appear? and if this be their true construction, as it certainly is their construction in practice, which our own experience testifies, to what, after all, do they amount, more than without them the laws of nations, as universally recognized, of themselves pronounce? What real security do they afford more than the treaty with Great Britain affords?

It is much to be suspected, that there will always be found advantages essentially nominal, operating or not according to the strength or weakness of the neutral party; which, if strong, will find abundant foundation in the acknowledged laws of nations on which to rest the protection of its rights.

It has been said to be just matter of surprize, that these precautions should have no place in a treaty with Great Britain, whose conduct on the seas, so particularly suggested and enforced every guard to our rights that could be reasonably insisted on. Observations of this kind assume constantly the supposition, that we had it in our power to fashion every provision of the treaty exactly to our own taste, and that the ideas of the other contracting party were to have no influence even upon the minor features of the contract. But this supposition is absurd; and a treaty may still be entitled to our approbation, which adjusts acceptably the great points of interest, though in some of its details it falls short of our desires. Nor can any well-informed man sincerely deny that it was to have been expected, that an adjustment of the particulars in question, would fall short of our ideas. It may be answered, that we were then at liberty not to make the treaty; so we were; but does it follow that it would have been wise to split on such points?—upon a just estimate, their intrinsic value is very moderate.

No. XXXII.

THE eighteenth article of the treaty, which regulates the subject of contraband, has been grievously misrepresented; the objections used against it with most acrimony, are disingenuous and unfounded! Yet while I make this assertion, which, I flatter myself, I shall be able to prove, I shall not pretend to maintain that it is an article completely satisfactory. I even admit that it has one unpleasant ingredient in it, and I am convinced that our envoy must have consented to it with reluctance.

But while candour demands this concession, it equally admonishes us, that, under the circumstances of the moment, the points in this respect to be adjusted were peculiarly unmanageable—that the position of the other party rendered an arrangement, entirely agreeable to us, impracticable; that without compromise nothing could have been regulated; that the article made no change for the worse in our prior situation, but in some particulars made our ground better; and that estimating truly the relative circumstances of the parties, there is no probability that any thing more acceptable could have been established.

I will add, that a degree of imperfection, which may fairly be attributed to this article, is far from being of such importance, as, on solid calculations, ought to defeat the treaty—No clear right is abandoned, no material interest of the nation injured.

It is one thing, whether every part of the treaty be satisfactory—another, and a very different thing, whether in the aggregate it be eligible or not, and ought to be accepted or rejected. Nations could never make contracts with one another, if each were to require that every part of it should be adjusted by its own standard of right and expediency. The true question always is upon the collective merits of the instrument; whether, upon the whole, it reasonably accommodates the opinions and interests of the parties. Tried by this test, the treaty negotiated with Great Britain, fully justifies the acceptance of it by the constituted authorities of our country, and claims the acquiescence of every good citizen.

The most laboured, and, at the same time, the most false of the charges against the eighteenth article is, that it allows provisions to be contraband in cases not heretofore warranted by the laws of nations, and refers to the belligerent party, the decision of what those cases are.—This is the general form of

the charge. The draft of a petition to the legislature of Virginia, reduces it to this shape. The treaty “*expressly* admits, that provisions are to be held contraband in cases other than when bound to an invested place, and *impliedly* admits, that such cases exist at present.”

The first is a palpable untruth, which may be detected by a bare perusal of the article.—The last is an untrue inference, impregnated with the malignant insinuation that there was a design to sanction the unwarrantable pretension of a right to inflict famine on a whole nation.

Before we proceed to an analysis of the article, let us review the prior situation of the parties. Great Britain, it is known, had taken and acted upon the ground, that she had a right to stop and detain, on payment for them, provisions belonging to neutrals, going to the dominions of France. For this violent and impolitic measure, which the final opinion of mankind will certainly condemn, she found colour, in the sayings of some writers of reputation, on public laws.

A passage of this kind, from Vattel, has been more than once quoted, in these terms, “Commodities, particularly used in war, and the importation of which, to an enemy, is prohibited, are called *contraband* goods. Such are military and naval stores, timber, horses, and *even provisions in certain junctures, when there are hopes of reducing the enemy by famine.*” Heinecius* countenances the same opinion, and even Grotius seems to lean towards it.†

The United States, with reason, disputed this construction of the law of nations! restraining the general propositions which appear to favor it, to those cases in which the chance of reducing by famine was *manifested* and *palpable*, such as the cases of particular places, bona fide, besieged, blockaded or invested. The government accordingly remonstrated against the proceeding of Great Britain, and made every effort against it which prudence, in the then posture of affairs, would permit. The order for seizing provisions, was, after a time, revoked.

In this state our envoy found the business, pending the very war in which Great Britain had exercised the pretension, with the same administration which had done it, was it to have been expected that she would, in a treaty with us, even virtually or impliedly have acknowledged the injustice or impropriety of the conduct? Here was no escape, as in the instance of the

* Law of nature and nations. B. 2. C. 9. S. 201. Navibus ob vecti.

† Book III. Chap. I. and V. 3. Chap. I. and X.

order of the 6th of November, 1793, in the misconceptions of her officers. The question was to condemn a deliberate and unambiguous act of the administration itself. The pride, the reputation, and the interest of that administration forbade it.

On our side, to admit the pretensions of Great Britain was still more impossible.—We had every inducement of character, right, and interest against it. What was the natural and only issue out of this embarrassment? Plainly, to leave the point unsettled; to get rid of it; to let it remain substantially where it was before the treaty. This, I have good ground to believe, was the real understanding of the two negociators; and the article has fulfilled that view.

After enumerating specifically what articles shall be deemed contraband, it proceeds thus, “ And whereas the difficulty of agreeing on the *precise cases*, in which alone *provisions* and *other articles*, not generally contraband, may be regarded as such, renders it expedient to provide against the inconveniencies and misunderstandings which might thence arise: It is further agreed, that whenever any such articles, so becoming contraband according to the laws of nations, shall, for that reason, be seized, the same shall *not be confiscated*, but the owners thereof shall be *speedily* and *completely indemnified*; and the captors, or, in their default, the government under whose authority they act, shall pay to the masters or owners of such vessels, the full value of all articles with a reasonable mercantile profit thereon, together with the freight and also the demurrage, incident to such detention.”

The difficulty of agreeing on the precise cases in which articles, not generally contraband, become so, from particular circumstances, is expressly assigned as the motive to the stipulation which follows.—This excludes the supposition that any cases whatever were intended to be admitted or agreed. But this difficulty rendered it expedient to provide against the inconveniencies and misunderstandings which might thence arise—a provision, with this view, is, therefore, made, which is that of liberal compensation for the articles taken.—The evident intent of this provision is, that in *doubtful cases*, the inconveniencies to the neutral party being obviated or lessened by compensation, there may be the less cause or temptation to controversy and rupture—the affair may be the more susceptible of negotiation and accommodation. More than this cannot be pretended; because it is further agreed, “ that whenever any such articles, so become contraband, according to the existing laws of nations, shall, for that reason, be seized, the same shall not be confis-

eated, but the owners thereof shall be speedily and completely indemnified," &c.

Thus the *criterion* of the cases, in which articles, not generally contraband, may, from particular circumstances, become so, is expressly the *existing law of nations*; in other words, the law of nations at the time the transaction happens. When these laws pronounce them contraband, they may, for that reason, be seized; when otherwise, they may not be seized. Each party is as free as the other to decide whether the laws of nations do, in the given case, pronounce them contraband or not, and neither is obliged to be governed by the opinion of the other. If one party, on a false pretext of being authorized by the laws of nations, makes a seizure, the other is at full liberty to contest it, to appeal to those laws, and, if it thinks fit, to oppose, even to reprisals and war. This is the express tenor of the provision—there is nothing to the contrary; nothing that narrows the ground; nothing that warrants either party in making a seizure, which the laws of nations, independent of the treaty, permits; nothing which obliges either party to submit to one, when it is of opinion the law of nations has been violated by it.

But as liberal compensation is to be made in every case of seizure, whereof difference of opinion happens, it will become a question of prudence and expediency, whether to be satisfied with the compensation, or to seek further redress. The provision will, in doubtful cases, render an accommodation of opinion the more easy, and, as a circumstance conducing to the preservation of peace, is a valuable ingredient in the treaty. A very different phraseology was to have been expected, if the intention had been, to leave each party at liberty to seize, agreeably to its own opinion of the law of nations, upon the condition of making compensation—The stipulation would thus have been: "It is agreed, that whenever either of the contracting parties shall seize any such articles so *becoming* contraband, and which shall, for that reason, be seized;" this makes, not the opinion of either party, but the fact of the articles having *become* contraband by the laws of nations, the condition of the seizure.

A cavil has arisen on the term "*existing*," as if it had the effect of enabling one of the parties to make a law of nations for the occasion. But this is a mere cavil.

No one nation can make a law of nations; no positive regulation of one state, or of a partial nomination of states, can pretend to this character. A law of nations is a law which nature, agreement, or usage has established between nations; 26

this may vary from one period to another by agreement or usage, the article very properly uses the term "existing," to denote that law, which at the time the transaction may happen, shall be then the law of nations. This is a plain and obvious use of the term, which nothing but a spirit of misrepresentation could have perverted to a different meaning.

The argument against the foregoing construction is in substance this (*viz.*) it is now a settled doctrine of the law of nations, that provisions and other articles, not generally contraband, can only become so when going to a place besieged, blockaded, or invested—cases of this kind are fully provided for in a subsequent part of the article; the implication therefore is, that something more was intended to be embraced in the antecedent part.

Let us first examine the fact, whether all the cases of that kind are comprehended in the subsequent part of the article. I say they are not—the remaining clause of the article divides itself into two parts. The first describes the case of a vessel sailing for a port or place belonging to any enemy, without knowing that the same is either besieged, blockaded, or invested; and provides, that, in such case, the vessel may be turned away, but not detained, nor her cargo, if not contraband, confiscated, unless after notice she shall again attempt to enter: The second describes the case of a vessel, or goods, which had entered into such port or place before it was besieged, blockaded, or invested, and declares that the one or the other shall not be liable to confiscation, but shall be restored to the owners thereof. These are the only cases described or provided for. A third, which occurs on the slightest reflection, is not mentioned: the case of a vessel going to a port or place which is besieged, blockaded or invested, with notice of its being in that state when she commences her voyage, or previous to her receiving notice from the besieging, blockading, or investing party. This is left to the operation of the general law of nations, except so far as it may be affected in respect to compensation by the antecedent clause. Thus the fact, which is the foundation of the argument, fails, and with it, of course, the argument itself.

But had this been otherwise, the conclusion would still have been erroneous—the two clauses are entirely independent of each other, and though they might both contemplate the same cases in whole, or in part, they do it with an eye to very different purposes.

The object of the first is to lessen the danger of misunderstanding, by establishing this general rule, that wherever articles, not commonly contraband, become so from particular circum-

stances, according to the law of nations, they shall still not be confiscated, but, when seized, the owners of them shall be indemnified.

The object of the last is to regulate some special consequences with regard to vessels and goods going to, or which had previously gone to places besieged, blockaded, or invested; and in respect to which the dispositions of the laws of nations may have been deemed doubtful or too rigorous. Thus it is held, that the laws of nations permit the confiscation of ships and goods going to places besieged, blockaded, or invested; but this clause decides, that if going without notice, so far from being confiscated, they shall not even be detained, but shall be permitted to go whithersoever they please. If they persist after notice, then the contumacy shall be punished with confiscation. In both instances the consequence is entirely different from every thing in the antecedent clause.

There, there is seizure, with compensation. Here, in one instance, seizure is forbidden, and permission to go elsewhere is enjoined. In the other instances, the offending things are confiscated, which excludes the idea of compensation. Again, the last part of the last clause stipulates in the case, which it supposes, the restoration of the property to its owners, and so excludes both seizure and compensation. Hence it is apparent the objects of the two clauses are entirely foreign to each other, and that no argument nor inference whatever can be drawn from the one to the other.

If it be asked, what other cases there can be, except those of places besieged, blockaded, or invested? and if none other, what difficulty in defining them? why leave the point so vague and indeterminate? One answer, which indeed has already been given in substance, is, that the situation of one of the parties prevented an agreement at the time; that not being able to agree, they could not define; and the alternative was to avoid definition—The want of definition only argues want of agreement. It is strange logic to assert, that this or that is admitted, because nothing is defined.

Another answer is, that even if the parties had been agreed that there were no other cases than those of besieged, blockaded, or invested places, still there would have remained much room for dispute about the precise cases, owing to the impracticability of defining what is a besieged, blockaded, or invested place. About this there has been frequent controversy; and the fact is so complicated, puts on such a variety of shapes, that no definition can well be devised, which will suit all. Thence nations, in their compacts with each other, frequently do not

attempt one; and where the attempt has been made, it has left almost as much room for dispute about the definition as there was about the thing.

Moreover, is it impossible to conceive other cases than those mentioned above, in which provisions and other articles not generally contraband might, on rational grounds, be deemed so? What if they were going expressly, and with notice, to a besieging army, whereby it might obtain a supply essential to the success of its operations? Is there no doubt that it would be justifiable in such case to seize them? Can the liberty of trade be said to apply to any instance of direct and immediate aid to a military expedition? It would be at least a singular effect of the rule, if provisions could be carried without interruption for the supply of a Spanish army besieging Gibraltar, when, if destined for the supply of the garrison in that place, they might, of right, be seized by a Spanish fleet.

The calumniators of the article have not had the candour to notice that it is not confined to provisions, but speaks of provisions and other articles. Even this is an ingredient which combats the supposition that countenance was intended to be given to the pretension of Great Britain with regard to provisions; which, depending on a reason peculiar to itself, cannot be deemed to be supported by a clause including other articles, to which that reason is entirely inapplicable.

There is one more observation which has been made against this part of the article which may deserve a moment's attention. It is this, that though the true meaning of the clause, be such as I contend for, still the existence of it affords to Great Britain a pretext for abuse which she may improve to our disadvantage. I answer, it is difficult to guard against all the perversions of a contract which ill faith may suggest. But we have the same security against abuses of this sort, which we have against those of other kinds, namely, the right of judging for ourselves, and the power of causing our rights to be respected. We have this plain and decisive reply to make, to any uncandid construction which Great Britain may, at any time, endeavour to raise, "The article pointedly and explicitly makes the existing law of nations, the standard of the cases in which you may rightfully seize provisions and other articles not generally contraband. This law does not authorize the seizure in the instance in question; you have consequently no warrant under the treaty for what you do."

The same disingenuous spirit which tinctures all the conduct of the adversaries of the treaty, has been hardy enough to im-

pute to it the last order of Great Britain, to seize provisions going to the dominions of France.

Strange, that an order issued before the treaty had ever been considered in this country, and embracing the other neutral powers besides the United States, should be represented as the fruit of that instrument!* The appearances are, that a motive no less imperious than that of impending scarcity, has great share in dictating the measure, and time, I am persuaded, will prove that it will not ever be pretended to justify it by any thing in the treaty.

CAMILLUS.

No. XXXIII.

THE course thus far pursued in the discussion of the 18th article, has inverted the order of it, as it stands in the treaty. It is composed of three clauses; the two last of which have been first examined—I thought it adviseable, in the outset, to dispose of an objection which has been the principal source of clamour.

The first clause of that which remains to be examined, enumerates the articles, which, it is agreed, shall be deemed contraband of war. These are, “all arms, and implements serving for the purpose of war, such as cannon, musquets, mortars, petards, bombs, grenadoes, carcasses, faucifles, carriages for cannon, musquet-rests, bandoliers, gunpowder, match, salt-petre, balls, pikes, swords, head-pieces, cuirasses, halberts, lances, javelins, horse furniture, holsters, belts, and generally all other implements of war; as also timber for ship-building, tar or rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted.”

All which articles are declared to be just objects of confiscation, when attempted to be carried to any enemy of either party.

It is well understood, that war abridges the liberty of trade of neutral nations; and that it is not lawful for them to supply either of two belligerent parties with any article deemed contraband of war; nor may they supply any article whatever to a

* As reasonable would it be to place to its account the similar order which was issued before the mission of an envoy was thought of.

place besieged, blockaded or invested. The former case includes a special catalogue of articles which have an immediate reference to war—The latter extends to all kinds of goods and merchandize. The penalty in both cases is confiscation.

These positions have not been disputed. The only question which has been or can be raised, must respect the enumeration of the articles which are to be considered as contraband.

In comparing the enumeration in the present treaty, with that of our former treaties, we find the differences to be these. Our former treaties include "*horfes*," and one of them "soldiers," which our present does not; but our present includes "timber for ship-building, tar or rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted," which are not to be found in our former treaties.

It is alleged that the including of these articles is an extension of the list of contraband beyond the limit of the *modern* law of nations; in support of which allegation, it is affirmed, that they have been excluded by the uniform tenor of the treaties which have been formed for more than a century past.

Though this position will not, upon careful examination, appear correct; yet it is so far founded, as to claim an acknowledgment, that the article under consideration has, in this instance, pursued the *rigor* of the law of nations. It was to this, I alluded, when I observed that it contained one unpleasant ingredient.

It is a fact, that far the greater proportion of modern treaties exclude naval stores or articles for ship-building; yet this is not universally the case.

By the third article of the treaty of alliance and commerce between Great Britain and Denmark, in 1670, the parties agree "not to furnish the enemies of each other with any provisions of war, as soldiers, arms, engines, guns, ships or other necessaries for the use of war, nor to suffer the same to be furnished by their subjects." An explanation of this article was made by a convention, dated the 4th of July, 1780, which, after enumerating as contraband, the usual catalogue of military implements, adds, in the precise terms of our article, "as also timber for ship-building, tar, rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron, and fir planks only excepted."

In a series of treaties between Great Britain and Portugal, down to the year 1703, I do not discover that there has ever

been a regulation of the articles which are to be treated as contraband, between these powers.

And between Sweden and Great Britain, the 11th article of a treaty, entered into in 1661 (and still in force unaltered, though a subsequent commercial treaty was made between those powers as late as 1776) subjects to confiscation equally all articles called *contraband*, and *especially money, provisions, &c.* The specification not being complete, naval stores are left upon the open ground of the law of nations; but money and provisions are superadded—This latitude would bear little doubt as to the intention to include naval stores.*

It appears from these specimens, that there is not a perfect uniformity in the conventions between nations; and that no purely positive law of nations can be deduced from that source.

If we call to our aid the principles of reason and natural justice, which are the great foundations of the law of nations, we shall not discover, in this instance, *data* as certain as could be wished, for a satisfactory conclusion; and the soundest determination, which we can adopt, will be, that beyond a certain point, the question is in a great degree arbitrary, and must depend materially upon conventional regulation between nation and

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* An opinion has been propagated that Sweden armed in concert with Denmark, in order to maintain the neutral right of carrying corn and flour to France, in opposition to the convention of March, 1793, between Great Britain and Russia; and that, in consequence of this proceeding, the remonstrances of these powers have proved more successful than we have been in obtaining satisfaction from Great Britain.

This opinion is, throughout, an error, made use of by those whose persevering aim has been, by silencing truth, reason, and moderation, and inflaming the angry passions of the community, to *involve* the country in anarchy and war.—The authors of this imposture, as well as the exalted patriots who have seen in the memorial of our envoy, the humiliation of our country, are referred to a “collection of state papers relative to the war against France,” published by Debret, in 1794. The perusal of the Swedish state papers, as well as the memorials of the able and prudent Bernstorff, may teach these gentlemen a little of what is deemed good manners on these occasions.

So far from even remonstrating, much less arming on account of the British instruction of June, 1793, when that order was notified at Stockholm, by the British resident there, the government of Sweden, by their resident at London, acknowledged, in terms too respectful to be repeated in the hearing of our exclusive patriots, that Sweden was perfectly satisfied with the instruction; since, instead of payment, which the order insured, all provisions, in virtue of an existing treaty between the two nations, were liable to confiscation when seized, on their way to an enemy.

This note is added for the purpose of refuting a popular error, and not to vindicate the instruction alluded to, which I consider as an injury to the rights of neutral nations, that has not been justified by the answers that have been given by Great Britain to the American and Danish memorials.

nation.—Hence it is there is so great a diversity in the stipulations of different parties on this point; indicating that there is no absolute rule. Hence also it is, that several nations, at different times, being at war, have thought themselves authorized to regulate and announce, by public declarations, the article which they would consider and treat as contraband.

The opinion of writers will be found to support the article as it stands, in the particular, which is now the subject of discussion.

Vattel, we have before seen, (B. B. C. 3. 6, 7. f. 112) expressly ranks *naval stores* and *timber* under the denomination of contraband goods.

Hienecius (*de navibus*, &c. Chap. I. S. 10, 11 and 14) accords in the same position to the extent of whatsoever appertains to the equipment of vessels.*

Bynkershoek is less explicit. After laying it down as the general rule that naval stores or the materials of ships, are not contraband, he proceeds thus—"Yet it sometimes happens that the materials of ships may be prohibited, *if an enemy is in great want of them, and without them cannot conveniently carry on the war*;"† and he afterwards cites, with approbation, several edicts or proclamations, which the states general, in different wars with different nations, have published, declaring those articles contraband—thus referring it to the belligerent party to judge of, and pronounce the cases when they may rightfully be deemed so—And the same idea seems to have been adopted by *Grotius*‡ and some other writers on public law—I have not met with one whose opinion excludes naval stores from the list of contraband.

Grotius, in discussing this question, divides goods into three classes, 1. Those which are of use only in war, as arms, &c. 2. Those which serve only for pleasure; 3. Those useful for peaceable as well as for warlike purposes, "as money, *provisions*, ships and *naval stores*"—concerning which he argues in substance, that the first class are clearly contraband; that the second class are clearly not contraband; and that the third class may or may not be so, according to the state and circumstances of the war; alleging, that *if necessary to our defence, they may be intercepted*, but upon condition of restitution, unless there be

* Vela, Restes et si quæ alia ad apparatus nauticum pertinent.

† Quandoque tamen accidit ut et navium materia prohibeatur, si hostis ea quam maxime indigeat at absque ea commode bellum gerere laud possit—*Quæstionum juris Publici* L. I chap. X. page 80.

‡ B. iii. C. I. V.

just cause to the contrary; which just cause is explained by the examples of sending them to a besieged, or blockaded place.

The reasoning about the third class has a very inconvenient latitude. It subjects the trade of neutral nations too extensively to the discretion of belligerent powers; and yet there is a serious embarrassment about drawing the true line, one which will duly conciliate the safety of the belligerent, with that of the neutral party.

What definition of contraband, consulting reason alone, shall we adopt? Shall we say, that none but articles peculiar to war ought to receive this denomination? But is even powder *exclusively applicable* to war? Are nitre and sulphur, its chief ingredients, *peculiar* to war? Are they not all useful for other purposes; some of them in medicine, and other important arts? Shall we say, that none but articles prepared and organized for war, as their primary object, ought to have that character? But what substantial difference can reason know, between the supply to our enemy of powder, and that of sulphur and salt-petre, the easily convertible materials of this mischievous compound?

How would either of these definitions, or any other, comport with what those of our treaties which are thought unexceptionable, in this particular, have regulated, or with what is common in the treaties between other nations? Under which of them shall we bring horses and their furniture?

If we say, that in wars by land, these are instruments little less important than men, and, for that reason, ought to be comprehended; it may be asked in return, what can be more necessary in wars by sea, than the materials of ships, and why should they not, for the like reasons, be equally comprehended?

In wars between maritime nations, who transfer its calamities from the land to the ocean, and wage their most furious conflicts on that element, whose dominions cannot be attacked or defended without a superiority in naval strength, who moreover possess distant territories, the protection and commercial advantages of which, depend upon the existence and support of navies, it is difficult to maintain, that it is against reason, or against those principles which regulate the description of contraband, to consider as such the materials which appertain to the construction and equipment of ships.

It is not a sufficient objection, that these articles are useful for other purposes, and especially for those of maritime commerce—Horses are of primary utility in agriculture; and it has been seen that there are other articles indisputably on the

list of contraband, which are entirely within the principle of that objection.

Rutherford, a sensible modern writer,* after truly observing, “ that the notion of contraband goods is of some latitude, so that it is not easy precisely to determine what are and what are not of this sort—that all *warlike stores* are certainly contraband, but that still the question returns, what are to be reckoned warlike stores ?”—after noticing the division of articles by Grotius and the difficulties with regard to the third class—draws this conclusion, that “ where a war is *carried on by sea* as well as by land, not only ships of war which are already built, but the materials for building or repairing of ships, will come under the notion of *warlike stores*.” This is a precise idea, and, it must be confessed, on principle, not an irrational one.

If we resort to the opinions which have been entertained and evidenced in our own country, they will be found to have given great extent to the idea of contraband—Congress, by an act of May the 8th, 1777, establishing the form of commissions for privateers, authorize them “ to attack, subdue, and take all ships and other vessels whatever, carrying soldiers, arms, gunpowder, ammunition, *provisions*, or any other contraband goods, to any of the British armies or ships of war, employed against the United States. And in their act of the 27th of November, 1780, acceding, in part, to the rule of the armed neutrality, they declare, that contraband shall be thereafter *confined* to the articles contained under this character, in our treaty with France; indicating, by this, their opinion that the list of those articles is abridged by that treaty. If the first mentioned act was well founded (and there are strong reasons for it) it establishes that even provisions may be contraband, if going directly to invading fleets and armies; which affords an instance of their being so (analogous to the case heretofore put of a besieging army) in addition, to the cases of places besieged, blockaded, or invested. And as to naval stores, I assert a belief, that the common opinion of those persons in this country, whose contemplation had embraced the subject, included them in the catalogue of contraband.

* Institutes of Natural Law, book II. chap. x. xix.

[No. XII.]

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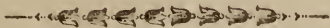
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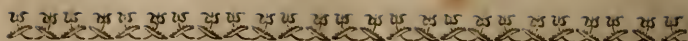


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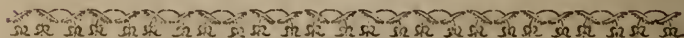
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C I N N A.—No. V.

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CAMILLUS, and all those who have preceded him, in considering the second article of the treaty, assert that it *accomplishes* a primary object of the envoy's mission, and one of great importance to the United States. He then details, at some length, the important advantages which must result from an acquisition of the western posts. Although there be nothing new in these details, I am glad he has gone into them, as such a view will enable us properly to appreciate the article in question.

Camillus states, that a recovery of these posts will extinguish a source of controversy between the two countries—will enable us to controul the hostilities of certain Indian tribes, which have already cost four millions—will extend our trade—will prevent Great Britain from contracting our boundaries—and will promote an harmonious and permanent connexion between the western and Atlantic countries.

That all these benefits would have accrued to the United States from an unconditional surrender of these posts, cannot be doubted. I say, unconditional, because when we come to the third article, we shall find, that as far as an extension of trade is concerned, Great Britain has taken care not only to come in for a participation of the fur trade, but that this clause is so constructed, as to secure to her, especially when her local situation is considered, an almost exclusive right to this lucrative branch of it. If the surrender of these posts will be of such immense moment to the United States, and their detention a proportional detriment, how happens it that the acquisition is not better secured than it is? You say, it is true, that the object is "*accomplished*;" from which expression, taken by itself, it might be inferred, that a restoration had *actually* taken place, that being the natural and obvious meaning of the word which is here made use of. It is not intended in this place to charge Camillus with an intention to deceive, because from other parts of this number, the period limited for this purpose is ascertained. But he will allow me to ask, as has often been done already, why the differences between the two countries could not have been adjusted in a separate instru-

ment? and why so remote a period is fixed for an evacuation, which might certainly have been made in a much shorter time?

Great Britain and the United States mutually complained of infractions of the treaty of peace. The former charged us with impeding the recovery of debts; and we, on the other hand, remonstrated, among other things, against her detention of the western posts. Without reviving here the question of, who was first in fault? which would only lead to repetition, and does not admit of much new light, it may be demanded, as the United States have, by the 6th article, not only admitted the truth of the allegation against them, but provided for, and actually assumed, and pledged their faith for payment of the principal and interest of all the British debts of this description; why, after so solemn and entire removal of the sole ground of complaint, did not our envoy insist upon a more prompt execution of those parts of the treaty which had been violated by Great Britain? It is evident that actual payment was not made by her a condition precedent; for no less than eighteen months are allowed for the exhibition of claims after the commissioners meet. She, therefore, considered the promise on the part of our government as equivalent to a complete performance of such parts of the treaty as she alleged had been infringed by us. It became her duty, then, the moment this obstacle was removed, to withdraw her garrisons, in the words of that treaty, "*with all convenient speed.*" These terms have been called ambiguous, although Great Britain herself, by her conduct immediately subsequent to the treaty, assigned to them a meaning which they plainly import, and which none but a sceptic would ever have called in question. If we may judge by the time employed in removing from other parts of the United States, and particularly from this city (New York, whose evacuation was completed in the fall of 1783) we may conclude, that the garrisons from these posts might have all been withdrawn in fewer weeks than our envoy has granted months for the purpose.

Taking together this article, so far as it respects the contemplated evacuation, and the sixth article, abstracted from other parts of the treaty, perhaps no other reasonable objection can be offered against them, except the unreasonable time allowed to Great Britain to perform her part of the stipulation. But when it is considered, that this article makes part of a treaty of commerce, replete with the most injurious concessions from the United States, some of which have undoubtedly been insisted upon as considerations for it; who will be hardy enough to ex-

patiate upon advantages which bear no comparison with the sacrifices which have been incurred to obtain them? It will readily occur, to every reader, that if America refuses to ratify a single article, this one which has been excepted as the chef d'œuvre of our negociator, must also become a dead letter. Every friend to his country must fervently wish either that the president will have virtue and firmness enough to refuse it his sanction, or that the king, in a fit of pride, will not consent to the modification proposed by the senate. That honorable body may yet, without intending it, have promoted the salvation of their country.

But admitting a ratification to take place, is not every page a fruitful source of doubts and altercations? If about so plain and short an instrument as that which gave us peace, disputes immediately arose between the two countries, and continued without adjustment for more than ten years—if the plainest expressions, and one of the most important articles, were quibbled into unmeaning and nugatory stipulations—if the constructions of Great Britain, although manifestly repugnant to the sense of the contracting parties—to the subject matter of the compact, and to the plain import of the terms, has been warmly supported by men of talents and character among ourselves, who can say that similar discussions and difficulties will not very soon take place respecting an agreement, containing as many pages as the other does sentences, and embracing a much greater variety of matter? In such an event, the charge that we have *first* broken the treaty will be renewed; we may retort it if we please; but the posts will be detained until the differences are settled, for which purpose another embassy extraordinary must be recurred to; and who can insure that we shall then be able to command the diplomatic skill and talents of Governor Jay? Notwithstanding, therefore, Camillus considers this object as accomplished, it may fairly be regarded as distant as ever, or at least depending on such a variety of intervening incidents, as may probably defeat it altogether. It has frequently been urged, that nothing but a desire to procrastinate, and finally to break her engagements, if circumstances render it prudent, could have induced Great Britain to insist upon so unreasonable a time to perform what good faith demanded of her, the moment we satisfied the breach, alleged to have been made by us, and which she could have no interest in deferring to a remote day, if she ultimately intended to comply with her promise. To garrison so many forts must be a great expense, to say nothing of the troops who might be much more profitably employed elsewhere. The views, therefore of the British

cabinet in retaining them so long, can neither be honorable, nor of the most pacific nature. They foresee, that if any controversy arises between the two governments, which is almost unavoidable, Great Britain will have a pretext for not carrying into effect this stipulation. They also foresee, or hope, that peace will, in the mean time, be restored to Europe, and that the king will have it in his power to make such use of intervening occurrences as circumstances may render prudent. On the part of America, no propitious event can reasonably be expected. Determined as she is to abide by all her engagements, which she has evinced in every trying situation, hers was the present moment ! It is almost past ; if she neglects, as an inconsiderate individual, to improve it, which has too long been the case, years of remorse and regret must follow.

If America could have commanded events, a more fortunate coincidence could not have occurred than those which succeeded each other, in rapid and astonishing progress, during the whole of her negotiation ; a more brilliant campaign, than the one on the part of our ally, is not furnished in the annals of history. Success every where crowned her arms—although singly opposed to the coalesced powers of Europe, she not only expelled the enemy from her own territory, but made foreign conquests which surpass belief. Great Britain, with an obstinacy bordering on despair, expected her fate, which all Europe considered inevitable. Could a more auspicious season for negotiation have been desired ? Our information from Great Britain corresponded with the sanguine expectations which the reiterated defeats of the combined armies, composed in part of British regiments, could not fail to excite. Every letter from London was replete with the successful career of our envoy. He was represented as obtaining every thing he asked ; the mercantile interest of that country had arranged itself on his side. Disgusted with the conduct of their own court, and alarmed at the probable consequence, the merchants, in a body, or by deputation, even before Mr. Jay's arrival, waited on Mr. Pitt, and extorted, from his fears, or a sense of justice, a relaxation in the predatory system, which was pursuing towards the United States. Nothing was talked of on either side of the Atlantic, but the gracious reception of the American minister, and the distinguished attentions which he received. Even the royal family vied with the ministers in their efforts to render his visit as pleasing as possible ; and when intelligence arrived, that a treaty was signed, not a man doubted but the terms of it corresponded with this fortunate concurrence of circumstances. The effect of these exaggerated accounts upon a late election is well known. Who,

after all this, can believe that this golden opportunity has been permitted to escape, and that the fears of Great Britain have been allowed to subside without our compelling her to do us justice? Who can believe that she has had address enough to send our envoy home with a treaty which has kindled throughout the continent a flame greater than any excited by her former indignities or vexations? Camillus will smile, as he always does, at the idea of addressing the apprehensions of Great Britain, or laying hold of her fears to extort from her that redress which a sense of justice should long since have induced her to grant. Philo-Camillus has resented, in very intemperate language, my calling Camillus an apologist of Great Britain. I must be excused for not retracting an appellation, which is not less courted by Camillus, than deprecated by his friend.

Does not the 7th number of the Defence furnish new proofs of the epithet which has been applied to Camillus? Every picture which represents the situation of Great Britain as critical, is termed by him "exaggerated or false." If her armies and those of her allies have been defeated by land, she is, notwithstanding, "*triumphant on the ocean.*" If she owes an immense debt, "*her credit is unimpaired*" and "*her resources are prodigious.*" If some discontents prevail, "*her government is vigorous, and was never better supported.*" If her manufactures are injured, "*they are still in a flourishing situation.*" If her commerce is annoyed, "*it is, notwithstanding, extensive, and prosperous.*" If she is in difficulties or distress, "*she is still haughty and overbearing.*" Truly, sir! while you thus ring changes on the strength and resources of Great Britain, who can be blamed for suspecting your motives? Injured as we are, would it not have been a better proof of your amor patriæ, if you now and then brought into view, and no one can do it better, some of the resources of your own country? Your language constantly reminds us of the conduct of the royalists at the commencement of the late war. They expatiated, in very similar terms, on the folly, and even madness, of opposing by force, acts of the British parliament. They asserted, and with too much truth, that we were without men, without arms, without military knowledge, without money, without ships, without forts, without credit, and without any of the common means of defence; that our commerce would be ruined, our towns reduced to ashes; and our country laid waste. America, although the evils which she then complained of were inconsiderable, when compared with the aggravated insults and wrongs she is now submitting to, spurned at the thousand dangers which awaited her. Disdaining to submit, she

risked all to obtain redress. Heaven smiled on her god-like efforts, and the bloody and unequal contest terminated in freedom and independence.

It will not be without use to take a cursory view, in this place, of some of our resources, in case we are forced into war with a nation whose vexations, want of faith and justice, will scarcely leave us any other alternative. War, at any time, and under any circumstances, is an evil to be seriously deprecated; but it is a calamity, against which no human prudence or foresight, can, at all times, guard us. It is profitable, therefore, to know our own strength and importance, not that we may become insolent, and provoke aggressions, but that we may resent, in a dignified manner, those to which we may be exposed from the injustice or pride of other nations. It is not by tamely crouching to insults and indignities that we can long hope for the invaluable blessings of peace; it is by being just to others, and compelling others to be just to us. We may suffer in the conflict; but while our conduct is remembered, our public character will command respect, and no nation will gladly seek occasions to quarrel with us. The concessions we have been in a habit of making to Great Britain, and the returns we have received, have not only debased us abroad, but have damped the ardour of our youth, who cannot too early be taught to respect their country, and to resent the injuries she may receive. The pusillanimous language with which our public prints abound, would better suit the minions of an arbitrary despot, than the citizens of a free and enlightened nation. Patriotism and the love of liberty are almost extinct, and we must not be surprized, if the virtuous and heroic deeds of our countrymen who conducted us to the temple of freedom, and gave us a seat among the nations of the earth, are soon stigmatized as the Jacobinical efforts of discontented Democrats and Anarchists. These are the mild epithets which are constantly applied by a certain party, to the best patriots among us, for no other reason, than because, feeling for the prostrated honor and violated rights of their country, they urge the government to a more manly expression of their sentiments, and a more spirited vindication of their wrongs.

In case of war with Great Britain (which is by no means probable, if we act with becoming spirit) what are the evils to be apprehended?—Her most zealous partizans ridicule the idea of her ever obtaining a footing in this country. At the distance of a thousand leagues, reduced as her army already is, and at war with a great maritime power, it cannot be dreaded that she will be able to transport to this country, troops adequate to such

an attempt. If she had the means, her experience in the last war must satisfy her, that no conquest she can attempt will be an equivalent for the enormous expense of making and holding it. During the last war, although she recruited her armies in this country, although she subsidized several German princes, yet, with all this strength, added to her own, the only permanent acquisitions she made were a few acres on our sea coasts. Many of the disadvantages with which America then had to contend exist no longer. Among these may be reckoned, a cruel internal foe, whom, for a long time, we did not dare to punish as traitors. Yet many well-intentioned, weak-minded persons, whose opinions and wishes were on the side of their country, but dreaded too much the power of Great Britain, and the punishment which invariably follows an unsuccessful rebellion, openly to espouse her cause, total want of military skill, no regular government or constituted authorities, for committees and conventions could hardly be deemed such, no arms, a weak and undisciplined militia, no credit, nor any other means of representing money but by the pernicious circulation of a paper currency. Great Britain, it will also be remembered, was then in the zenith of her power, and at peace with all the world, which she had enjoyed without interruption since the treaty of Paris, in 1763, a period of more than twelve years. Under all these discouraging circumstances, America unsheathed the sword. She suffered, it is true; but in the midst of calamities, which she can never experience again, she achieved prodigies of valour; and a success exceeding her most sanguine hopes, finally crowned her arms. What is our situation at present? We have constitutions and governments of our own choice—Our general government is as well obeyed, notwithstanding daily allegations to the contrary, as any in the world—We shall no longer fight with halters about our necks, or with a gibbet in view—We have men, whose military skill and experience, acquired in the late war, will be inestimable—We have not only credit, but other means of raising a revenue, without again recurring to the depreciating and fluctuating medium of paper—We have a militia exceeding half a million of men, well disciplined and accoutred, and officered, in many instances, by persons who have received military lessons in the field of danger and of death—Great Britain has added millions to her debt; her commerce, if not ruined, has greatly suffered by the French privateers; her manufacturers are out of employ, and clamorous, and, what is no unimportant consideration, we shall have a powerful ally in France, who has stemmed the united force of Europe, has conquered some of

her enemies, and compelled others to sue for peace. This subject will be resumed in my next number, and further notice taken of the seventh essay of Camillus.

C I N N A.

New York, August 15, 1795.

P. S. I am abused for my intemperate expressions with respect to Camillus. I neither know him, nor does he know me. My conclusions are drawn from his writings. If he be a patriot, he takes uncommon pains to make the world think otherwise. He calls me a Jacobin for defending my country; and he and his friends are angry with me when I suspect his patriotism for making such defence necessary. No good will result from being personal. Let principles, and not men, be our objects. Against arguments, and not motives (except when they may be fairly inferred from our public conduct or writings) be our attack. By his defence (for I know nothing more of him) shall my judgment be formed of Camillus. By my reply (which is all he will probably ever know of me) he is at liberty to make up his opinion of me. Ridicule and abuse are no more tests of truth, than flowing numbers or fine-turned periods. A question more momentous, than the one in which we are engaged, has not been agitated since our existence as a nation! Let us be warm, but not rude. With the talents of Camillus, the task would be easy to convince any unprejudiced person, that our very independence hangs on a rejection of the treaty. But nature is seldom as lavish of her gifts as she has been to Camillus; I must be content, therefore, to pursue, in plain and unadorned language, a duty which birth and citizenship impose upon me, and in which I have no object unconnected with the welfare and happiness of my country.

No. VI.

IT is objected by some, who are for enduring every extremity, rather than incur the hazards of war, that our trade will be ruined by British cruisers, and that the revenue arising from it will fail. That our intercourse with foreign nations will undergo some interruption, and our commerce be exposed to considerable risk and injury, cannot be denied; but let us not look only at the dark side of the picture; if our trade to other nations is impeded, their ships will find no difficulty in obtaining access to us; they will assert their neutral rights; and, being no longer colonies, Great Britain will have no preten-

tions to interdict this communication, unless, indeed, she should attempt to starve the United States, and by proclamation blockade every port in the union. Such of these nations, as have not had the weakness or complaisance of America, to sacrifice to Great Britain, the protection which neutral bottoms should over afford, even to enemies' goods, may transport our property in safety to any part of the globe. It may well be doubted, then, whether our imports will be much less in times of war than at present, and even our exports in neutral vessels, and our own, will be considerable. Our merchants often mention, with astonishment, the number of vessels, which arrived safe during our revolutionary contest; when even neutral bottoms could not reach us without the same hazard of being captured and condemned as our own. But the commerce we should carry on, and that of neutral countries, would not be the only sources of revenue; our privateers would cover the ocean. Does not the commerce of Britain hold out allurements, and afford an extensive source of wealth to our enterprising merchants and mariners? The duty on prize goods, added to that on the importation of goods in the ordinary way, would not only prevent a diminution of the revenue, but carry it beyond its present point. Who would believe, that in the maritime courts of only three of the counties of Massachusetts, namely, of Suffolk, Essex, and Middlesex, there were libelled, during the last war, no less than one thousand and ninety-five vessels, with their cargoes, and thirteen cargoes which had been taken from vessels abandoned after their capture, making in the whole eleven hundred and eight! Mr. Coxe, in his View of the United States, assures us, that the records of those counties authenticate the fact. He also adds, that the number of vessels belonging to Great Britain, in 1774, as stated by a British premier, in his place in parliament, was, 6219, whereof 3908 were British built, and 2311 were American built. "What havoc then," exclaims Mr. Coxe, "did these fishermen make among the British merchantmen? above a sixth of all their vessels, were brought by these people as prizes into the markets of the United States, with cargoes to an immense amount, composed of every species of military and domestic supply, in a season of the utmost emergency: it appears too, that these prizes were no less than a fourth part of all the British built ships of that nation. The opinion of the most candid and best-informed estimators, founded on careful enquiry, countenance the presumption, that fifty-five per cent. of all the vessels, captured by the people of Massachusetts during the war, were taken before their arrival; so that there is the utmost probability, that the whole number

of vessels, which were captured by the shipping of these three counties, was 2450 sail. How great a derangement was this to the British commerce; and how heavy must have been the expense of salvage paid to the re-captors; how great the number of marine prisoners; how serious the interruption to the manning of the navy? "It would appear," says Mr. Coxe, "that the armed vessels of our principal fishing state, captured, in the course of the late war, near one half of the merchant ships, ordinarily belonging to Great Britain, and above three-fourths of the number of her native built ships."

A striking proof is exhibited, in what precedes, of the serious impression made by *our* vessels on the navigation of Great Britain; at a time too, when it might reasonably be thought she had nothing to fear from us. The source from which this information is drawn, precludes the possibility of error. It may be added, that such were the apprehensions then entertained of American privateers, that insurance of British merchantmen was more exorbitant than in any war, in which that kingdom had been engaged for fifty years past, although no maritime nation, with whom she had contended during that period, had been so deficient in ships of war, as the United States. If America, then, in her very infancy, when she had to contend with a thousand difficulties, which are now surmounted, and can never occur again, was able thus to annoy the greatest naval power in Europe—who can estimate the wounds which she may now inflict on her commerce, in the present advanced state of her population and shipping? She would indeed find us an unprofitable and troublesome enemy; without the means of retaliation, she would have every thing to apprehend from America. Her trade, as well as that of Spain, Holland, and Portugal, passes by our coasts; and the injury and losses to which it would be exposed, are incalculable.

But not in her trade alone, would Great Britain be vulnerable; her colonial possessions on the continent, must fall into our hands. If the gallant Montgomery, at the head of a few hundred men, raised in haste, badly armed, and although brave, mere novices in discipline, reduced, in an inclement season, the whole province of Canada, except its capital, which, but for his unfortunate and much-lamented death, would also have opened its gates to the American arms; what may we not expect from the formidable force we should now be able to send against it? The inhabitants of Vermont alone, which was then but beginning its settlement, would more than suffice for its conquest. I make no account of the disposition of the inhabitants, who are represented as highly incensed against the Bri-

tish, and anxiously waiting a favorable occasion to shake off their yoke, and become part of the United States. Nova Scotia too, and the adjoining settlements, would be an easy prey to the militia of Massachusetts and the Province of Maine. These important acquisitions to the United States would more than countervail any loss they could possibly sustain. Nor would any part of the West Indies, in case of an American war, long continue colonies of Great Britain. France, with the aid she might derive from this country, could not fail to reduce them. Her fleets and armies, destined for such an expedition, after recruiting in the United States, might proceed, full of health and well-provisioned for the islands.

The evils to Great Britain would not stop here. Her subjects hold great part of the public debt of the United States, and our citizens are indebted to them, to the amount of many millions sterling. Britain being the aggressing nation, and the war, not only of her seeking, but manifestly unjust on her part, the principles of self-preservation would dictate, and her own conduct, and the laws of war justify, the sequestration of this property. Mr. Jay, it is true, with more complaisance to Lord Grenville, than delicacy to his own government, has declared such conduct impolitic and unjust. Congress, and in particular Mr. Dayton, who moved the measure, will not soon forget so handsome a compliment from a minister, whose respect for the legislature of his own country, whatever his private sentiments might be, ought to have checked this intemperate effusion. Mr. Jay appears to have thought an excuse necessary for an article, by which we yield much, without gaining any thing; and was, therefore, determined to insert one even at the expense of congress and the honour of his own country.

The tenth article will probably undergo an investigation hereafter; we proceed, therefore, to enumerate some other distresses to which an American war might expose Great Britain. The injury to her trade, from our privateers, has already been stated; but if not a single vessel of this description was fitted out, still her commerce would suffer beyond estimation. The interruption of her trade to this country, would be an evil which admits of no alleviation. In the year one thousand seven hundred and ninety one, we took from Great Britain, excluding Ireland and the British East Indies, in British manufactures, to the immense value of very near four millions of pounds sterling. It also appears, from authentic public documents, that the vessels of Great Britain, loaded in the United States, in 1791 and 92, were about equal in tonnage to all the British vessels, cleared out of that kingdom for Russia, Denmark, Nor-

way, Sweden, Prussia, Poland, Hamburgh, Bremen, and Germany in general. Will a nation, not insatuated, readily plunge into war with America, and encounter so great a loss as must inevitably ensue from a stagnation of trade; for the uncertain and precarious advantages to be reaped from such a state of things? If we have no security in her wisdom or justice, may we not place some reliance on her interest, which will be so sensibly and directly affected by a cessation of all intercourse between her and the United States? what will be the clamours of her manufacturers, many of whom are already idle and starving, when such valuable consumers, as the Americans, are compelled, by the injustice of their own government, to withdraw their custom? What must be the difficulties and discontents of the merchants, when all remittances from this country not only cease, but when their debtors here may be rendered unable, in the course of the war, to pay any part of their dues, even on the return of peace? What, but an universal spirit of distrust and dissatisfaction must pervade the whole kingdom, which is now panting for peace, when it is discovered, that the minister, by his violence and rashness, instead of restoring to it so great a boon, has precipitated it into a new war, which cannot fail to be unpopular, and as long as such extensive commercial connexions subsist between the two countries, must be execrated in proportion to the ruin and distress which will ever accompany it? Those who affect to despise the public opinion of Great Britain, betray an ignorance of the history of that kingdom. However strong the present attachment to their constitution—however well supported the crown may be—whatever backwardness or apprehension may be discovered at the mention of a revolution, after some of the unfortunate excesses which have been perpetrated in France, the voice of the people, in much more arbitrary reigns, has made itself heard, and ministers, who have been favorites of the crown, and supported with all the patronage and weight of royalty, have been compelled to yield to the imperious torrent, or have been brought to the block in their attempt to withstand it.

To conclude, from what happened in England in the last war, that one with America at present will be popular, would be to reason from mistaken premises. At that time an act of parliament had declared us in rebellion, and the general acceptance and belief corresponded with the declaration. The very term carried with it something that enlists the feelings of mankind against those, who are branded with the odious epithet. Many wise men in England, were in sentiment with this country, while she confined her object to redress of grievance, and

fought it by petitions and addressees; but when she took up arms, and more especially when she declared herself independent, views, hostile to the mother country, were imputed to her from the beginning, and a measure, extorted by dire necessity, and a sense of self-preservation, was considered, as full evidence of an original and early design to separate the colonies from the mother country. Although nothing could be more fallacious, and, in point of fact, more erroneous than such an inference, it had its effect; and either from real abhorrence of its attempt, or from a fear to avow their real sentiments, the American cause, for some time, lost ground in England.

At present, we are not only an independent people, but have been formally recognized in that character by the king and parliament of Great Britain. The justice or injustice, as well as the advantages and injuries of the war, would, therefore, become objects of enquiry in England, the result of which could not fail to be favorable to the American government and character. It could not escape the most cursory observer, that with a sincere disposition to cultivate peace, justice, and good understanding with all mankind, we had been most cruelly insulted and outraged by the British cabinet. Corresponding sentiments would take place, and the throne and parliament would be environed with petitions for peace; for, even in that country, it is yet lawful for the subject to convey, in respectful language, his complaints to the supreme authority of the nation, without incurring the appellation of Jacobin or Anarchist. What would be the effect of a war on the public debt of Great Britain, besides a prodigious accumulation, cannot be ascertained. Its present enormous bulk must fill thinking men with serious apprehensions for the consequences of a further increase. It already exceeds what the most intrepid financier would dare to call a public blessing. When we consider what an enormous sum was added to it by her attempt to reduce this country to unconditional submission, and the immense expense attending the operations of war, whose scene is so distant as America, it would excite no surprize, should a national bankruptcy be the consequence of another similar exertion. Private bankruptcy must follow, and public, as well as individual ruin must ensue. No man yet has forgotten the numerous failures and private distress which immediately succeeded the late rupture with France, the shock of which must have been inconsiderable, compared with what would happen on a breach with this country.

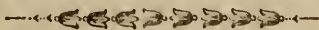
But, say those, who are, at all events, for peaceful measures, your sea ports are defenceless, and will be laid in ashes. De-

grading as my opinion is of the public conduct of Great Britain, I cannot bring myself to believe, that she will pay so little regard to the laws of war and humanity, as to conduct it in a way so totally repugnant to both. The burning of defenceless towns, or even those which are fortified, unless in attempts to reduce them, is an imputation so horrid, that it can only be made to excite our alarms. It is an evil not to be seriously apprehended. It is a possible, but not a probable danger. Desolating as the last war was, which raged with all the bitterness of civil fury, when neither principles, character, nor humanity were respected, how few of our towns were consumed: If then this calamity was but partially experienced during a controversy, in which a breach of faith and humanity towards rebels, was deemed no stain on the national character of Great Britain, why are we to apprehend this merciless warfare at present? It will neither be the policy nor interest of our enemy to conduct it in this way. The sea ports are emphatically the residence of their best friends. Destroy them, and by whom will the injury be felt? Principally by the advocates, not the enemies of Great Britain; by her apologists, not by our friends. Burn the sea ports, and what becomes of the British debtors? Set fire to our cities, and America, having lost all, she will become a desperate and implacable foe. But has Great Britain no defenceless towns? If justice and humanity have lost their influence on her councils, still motives of interest will not be wanting to restrain her from such barbarous displays of her superiority. Will she not dread retaliation? If America cannot, will not France be able to return the infamous warfare in kind? Will not all Europe applaud a deed provoked by her own cruelties and wantonness? Let us turn then from the disgusting apprehension, chimerical in the extreme. While France is at war, she can always, and it will be her interest to, furnish a fleet sufficient for the protection of those of our towns which are most exposed. Twelve ships of the line and as many frigates, which we ought to have of our own, will more than suffice for the purpose. Many of them are capable of fortification, and it would be no discredit to the government to employ more activity in putting them in a better state of defence. It is become so common, to attribute every effusion of patriotism to the worst of motives; that it is with some reluctance I dare to remind my fellow citizens, of the united voice of America, when similar apprehensions were excited to deter her from any opposition to the claims of the British parliament. I must, however, be so consonant to the feelings of many of the patriots of that day who yet survive, and whose principles are not adulterated by

pensions and offices, that I cannot withhold the pleasure it must afford them. "No, sirs," says congress, with one voice, addressing themselves to the people of Great Britain, "we never will, while we revere the memory of our gallant and virtuous ancestors, we never can surrender these glorious privileges for which they fought, bled, and conquered; admit, that your fleets could destroy our towns, and ravage our sea coasts; these are inconsiderable objects; things of no moment to men, whose bosoms glow with the ardour of liberty. We can retire beyond the reach of your navy, and, without any sensible diminution of the necessaries of life, enjoy a luxury, which, from that period, you will want; *the luxury of being free!*" This was the language of America, when she had infinitely more to apprehend than at present. Whither has the spirit, that dictated it, taken its flight? Where is now that public virtue, which not only manifested itself by those solemn expressions, which are now ridiculed as the frantic ravings of a distempered imagination, but carried into exercise, resolutions which astonished those to whom they were addressed, and which, any but men struggling to be free, would have shuddered to adopt? What, I repeat, is become of this spirit and patriotism? Are they laughed to scorn? Or do they cease to warm and animate the sons of Columbia? Heaven forbid! A few years of peace and luxury cannot have enervated their limbs, extinguished their martial fire, or stifled, in their generous breasts, sentiments which were once esteemed their ornament and pride. They want but to be roused into action. Should a necessity exist, and the gallant youth of America be summoned to their country's standard, may we not indulge the fond hope, that they will pant to entwine their brows with laurels, gathered in the walks of glory and honor, and burn to emulate, if not surpass, their illustrious fathers in heroic efforts, to avenge the public cause?

C I N N A.

New York, August 18, 1795.



A D D R E S S

To the Citizens of New York.

IF ever a period existed in the history of any people, in which great prudence and circumspection were essential to the preservation of public liberty, that period is now com-

pletely realized in the affairs of this country. To preserve our constitution of government in its present limited, and happy form ; to guard against the encroachments, and the ambitious views of men, with whom the arm of power is entrusted ; to prevent the executive magistrate from interfering with and exercising legislative authorities ; to maintain inviolate our national independence, and to give stability and energy to those political rights and liberties which are guaranteed by the first terms of the social compact ; is indeed an arduous, but it is a necessary duty ; a task which requires the most intimate union of patriotism and talents, of deliberation and caution, with fortitude and firmness.

Shall we ever remain embarrassed, as we hitherto have been, by the unhappy dissensions which so long have enlisted us under the dangerous banners of party ? Subdued by prejudices, and governed by delusion, shall we ever continue unmindful of the dictates of truth and reason ? Shall resentment and passion be always substituted for solid argument, and the invidious tongue of calumny be permitted to stifle enquiry ? If we really, with sincerity, regard our own rights and liberties, if we are, in truth, attached to the constitution of our country, the resolution must be formed to defend them from all invasion, from whatever quarter the attack may originate.

The late treaty with Great Britain has long been transmitted to public discussion ; already we perceive the undisguised aversion of our countrymen to that most odious of instruments : In vain do we search for its admirers among the steady patriots of our country. They are only to be found among the missionaries of Britain, and among the advocates of unlimited authority. These, indeed, have attempted to influence your prejudices, in favor of particular men, to excite your apprehensions, to seduce your understandings, and betray your judgments, into a compliance with the unnatural compact ; but all in vain. Truth is omnipotent, and will, eventually, discomfit their insidious attempts.

Were we not told, and did we not believe, that the sole object of negotiation was “ *a friendly adjustment of our complaints* ?” was it not officially intimated, that our envoy would “ *carry with him a full knowledge of the existing temper and sensibility of our country, and thus be taught to vindicate our rights with firmness* ?” Were we apprized, or who of us had reason to imagine, that the secret views and real intentions of our *cabinet*, was to strengthen the bands of political connexion, between this country and the monarchy of Great Britain ? At the moment the property of our industrious merchant was wrested from his

possession by the rapacious hand of violence; when our rights, as a neutral nation, were invaded, and the honor of our flag most basely injured and insulted, in short, when all the finer feelings of the American people were kindled into indignation at the perfidious combination against the common rights and liberties of mankind; the executive part of our government, regardless of the dignity of their country, and unmindful of the sentiments of the people, have concluded a treaty of *amity and commerce* with the most unprincipled of nations—Yet this is not all. We see in that baneful instrument, our commercial interests abandoned to British rapacity, our constitution violated, and its security submitted to the mercy of future administrations; we perceive a branch of the government attempting to bind us in particulars to which we had never, either expressly, or virtually, given our assent, and endeavouring to establish, as a constitutional principle, its unlimited right to *bind us in all cases whatsoever*.—With pain we view that branch attempting to draw the peculiar powers of the legislature within the vortex of its own authority; to invade the sovereignty of the constituent members of our union; to dispense with the existing laws and statutes of our country; to destroy the personal security and liberties of our fellow citizens, and, in time, to distort every feature that has either proportion, symmetry, or beauty, in our *federal constitution*. Such is the operation and nature of the present treaty. Such the injuries for which the American people unite to obtain redress.

To the House of Representatives of the United States—to the constitutional organs of the people, assembled in their legislative capacity, composed of men freely chosen from the body of the people by the voice of their country—actuated by their common sentiments, impelled by their general sensibilities, and authorized to declare the public will, we must submit our representations, in them repose our hopes of redress; in that *high deliberative assembly* we must place our trust, *for the preservation of public liberty, and the safety of the constitution*.

Citizens of New York! your countrymen throughout the United States have adopted a memorial to be transmitted to their public representatives. To that memorial they have affixed their signatures.—Their attention is placed upon you with an anxious solicitude that plainly bespeaks the importance of the occasion. Remember, that the preservation of public liberty is one of the most essential duties of social life. It remains then for you to evince to the world, that while you are zealously anxious to preserve the blessings of peace and order, and civil go-

vernment, you are equally determined to preserve the *liberties* and *constitution* of your country.

Form of the petition, to be transmitted to Congress.

To the Speaker and Members of the House of Representatives of the United States of America, in Congress assembled:

The Representation and Petition of the Subscribers, Inhabitants of the State of——, and Citizens of the United States,

Respectfully Sheweth,

THAT, viewing, with deep and anxious concern, the present awful crisis in the affairs of our common country, and influenced by an equal solicitude for the security of our rights and liberties, and the preservation of peace with all the world, we hereby exercise our constitutional right of petition, on a subject as momentous as any that has ever agitated the feelings, or affected the interests, of a free people.

The treaty of amity, commerce, and navigation between the United States and Great Britain, lately negotiated by the authority of the president of the United States, and conditionally ratified by the senate, has been submitted to, and undergone a full and public discussion: And your petitioners, having given to it an impartial and deliberate consideration, feel it a solemn and paramount duty, which we owe to ourselves and our posterity, to convey to you our free and unbiased opinion thereon; in doing which, with due deference to the constituted authorities of our country, whose sanction to the instrument in question, has been, in any manner, expressed, we declare, that to your respectable body alone we now look up, as that great and dernier constituted authority, which, having a more general and equal participation than any other department of the government, in the common interests and feelings of the people, and, moreover, possessing a constitutional controul and decision on all questions of peace and war, are peculiarly the guardians of the public peace, liberty, and welfare.

We regard, with the most lively apprehension, all those stipulations in the said treaty, which, being of a political nature, have a tendency, directly or indirectly, to involve us in the

political intrigues of European nations, to infract the treaty of alliance with France, and to give occasion for, and produce the sad spectacle of war, between that magnanimous republic, and the republic of the United States; stipulations with which, in our judgment, the said treaty unhappily too much abounds—And we cannot be less apprehensive, under those direct and manifest encroachments on the constitutional powers of congress and the rights of the people, which, in the exercise of an assumed power on the part of the president and senate, have been made by the said treaty, in the following instances:

1. In the regulation of commerce with a foreign nation;
2. In the regulation of trade and intercourse with the Indian tribes;
3. In regulating the territory of the United States, and of individual states;
4. In establishing duties and imposts;
5. In establishing a rule of naturalization;
6. In constituting a tribunal of appeal, paramount to the supreme judicial court of the United States;
7. In changing the tenure of, and establishing a rule to hold, real estates;
8. In defining piracies, committed upon the high seas, and declaring the punishment thereof;
9. In depriving free citizens of the privilege of the writ of habeas corpus, in the case of piracy, as defined and punished by the said treaty; and,

Lastly, in attempting, in various other instances, to restrain and limit the legislative authority of congress.

Wherefore, solemnly protesting against the exercise of power by the president and senate, in any of the foregoing cases, without the concurrence of congress, as manifestly tending to absorb all the powers of government in that department alone; to establish, as the sole rule of legislation over all the great foreign and domestic concerns of the United States, the mere will and absolute discretion of the president and senate, in conjunction with a foreign power; and finally to overturn and effect a total change in the present happy constitution of the United States. We, your petitioners, most earnestly pray, that the representatives of the people, in congress assembled, will, in their wisdom, adopt such measures, touching the said treaty, as shall most effectually secure, free from encroachment, the constitutional delegated powers of congress, and the rights of the people, and preserve to our country an uninterrupted continuance of the blessings of peace.

Defence of Mr. Jay's Treaty.

[CONTINUED FROM PAGE 216.]

No. XXXIII.—Concluded.

NEVERTHELESS, from the number of modern treaties, which exclude from that list naval stores, and moreover from the manifest interest of nations, truly considered, to narrow the rights of war in favor of those of peace; this clause of the treaty, which takes a different route, is to be regretted as pursuing the rigour of the law of nations—Still, however, it cannot be objected to, as a departure from the law; and agreeing with the course observed by Great Britain antecedent to the treaty, it does not place our trade in these articles upon a worse footing than it was, independent of the treaty.

The period of the negotiation was most unpropitious to a change for the better—in the midst of any maritime war, a belligerent nation, enjoying a naval superiority, was like to have been tenacious of a right which she supposed herself to possess to intercept naval supplies to her enemy—But in a war, in which it was more than ordinarily possible that the independent existence of a nation might depend on the retaining a naval superiority, it was to have been foreseen that she would not consent to relinquish such a right. The alternative was, to insert the article as it stands, or to omit it wholly.

Had it been omitted, the condition of naval stores would have been the same as with it. But our merchants would then have continued to be exposed to uncertain risks, which is always a great inconvenience. It is desirable, in similar cases, to have a fixed rule. Merchants can then accommodate their speculations to the rule; and causes of national contention are avoided.

It is in this view to be regretted, that the cases when provisions may be treated as contraband, could not have been agreed upon; but as this was impracticable, the next best thing has been done, by establishing the certainty of compensation in all such cases. This gives one important species of security, obviates one source of contention. And if really there may be other cases than the universally admitted ones, in which provisions can fairly be deemed contraband (as that designated by the act of congress of May 1777) the securing of compensation was truly a point gained by the article.

But while I confess, that the including of naval stores, among contraband articles, is an ineligible feature of the treaty, I ought to declare, that its consequences to the interests of the United States, as it regards the trade in those articles in time of war, do not appear to me important—War between other nations, when we are at peace, will always increase the demand for our bottoms, so as to require much additional building of vessels, and probably in that way to produce a more beneficial species of employment of the naval stores our country affords, than that of their exportation for sale.

The adversaries of the treaty are eagle-eyed to spy out instances in which it omits any favourable minutes which are found in our other treaties; but they forget to balance the account by particulars which distinguish it favorably from those treaties. Of this nature is the omission of horses from the list of contraband, and still more the salutary regulations with regard to vessels and their cargoes going to places besieged, blockaded, or invested. I do not discover that these useful provisions or their equivalents, are in either of our treaties with France, Holland, or Sweden.

It has been said, in reference to this article, “whenever the law of nations has been a topic for consideration, the result of the treaty accommodates Great Britain, in relation to one or both of the republics at war with her, as well as in the abandonment of the rights and interests of the United States,”—And the following examples are given, to each of which will be annexed a reply.

I. “American vessels, bound to Great Britain, are protected, by sea-papers, against French and Dutch searches; but when bound to France or Holland, are left exposed to British searches, without regard to ships’ papers.” The truth of this proposition depends on another, which is, that the sea-papers are to be absolutely conclusive; but reasons have been given for doubting this construction, which, it has been remarked, does not obtain in practice. And it is certainly a violent one, inasmuch as it puts it in the power of the neutral, to defeat the rights of the belligerent party, in points of great consequence to its safety.

II. “American provisions, in American vessels, bound to the enemies of Great Britain, are left by the treaty to the seizure and use of Great Britain; but provisions, whether American or not, in American vessels, cannot be touched by the enemies of Great Britain.” The construction of the treaty, upon which this difference is supposed, has been demonstrated to be erroneous.—The difference, therefore, does not exist.

III. "British property, in American vessels, is not subject to French or Dutch confiscation.—French or Dutch property in American vessels, is subject to British confiscation." This was the case before the treaty, which makes no alteration in the matter.—Moreover, it is counterbalanced by this circumstance;—That American property, in British vessels, is subject to confiscation by France or Holland; but American property, in French or Dutch vessels, is not subject to confiscation by Great Britain.

IV. "Articles of ship-building, bound to the enemies of Great Britain for the equipment of vessels of trade only, are contraband.—Bound to Great Britain, for the equipment of vessels of war, are not contraband." This, also, was the case before the treaty, which, consequently, has not in this particular more than the former, produced any benefit to one party, to the prejudice of the other. I forbear to dwell upon the article of horses, as falling under a contrary discrimination;—nor shall I insist on the additional circumstance, that all American goods not generally contraband, if going to a place besieged, blockaded, or invested by French or Dutch forces, are liable to confiscation by France or Holland; if going to a place besieged, blockaded, or invested by British forces, are not liable to confiscation by Great Britain.

Differences of these several kinds are the accidental results of the varying views of different contracting powers, and form slender grounds of blame or praise of the respective contracts made with them.

The form of the criticisms last stated, leaves little doubt that it was designed to insinuate an intention in this article to favor the Monarchs of Great Britain, at the expense of the Republics of France and Holland. The candor of it may be judged of by the two facts, first, that it makes no alteration, in this view, in the antecedent state of things; and secondly, that the relative situation of Holland, as the enemy of Great Britain, is subsequent to the adjustment of the article.

CAMILLUS.

No. XXXIV.

THE remaining articles of the treaty principally relate to those maritime regulations, that are usually inserted in modern treaties between commercial nations—and on that consideration, as well as from their evident utility in enabling us to

distinguish with precision between what is, and what is not lawful, in relation to those points—they are entitled to our approbation; still however even some of these customary articles, whose object and meaning are so well understood, have been deemed exceptionable.

The first paragraph of the nineteenth article, in order to prevent injuries by men of war, or privateers, enjoins (as before noticed) all commanders of ships of war and privateers, and all other citizens or subjects, of either party, to forbear doing any damage to those of the other, or from committing any outrage against them: and declares, that if they act to the contrary, they shall be punishable, and moreover bound in their persons and estates to make full satisfaction and reparation for all damages, of whatsoever nature the same may be.

These prohibitions are conformable with the laws of the United States: If under colour of authority, those to whom the same does not relate, shall receive injury, the act, according to its circumstances, is an offence, for which the offender is not only answerable to his own country, but moreover to the injured party, to whom he is bound to make full and complete reparation.

The open and explicit views of the parties, and their mutual engagement to put this law in execution against all offenders, will be a salutary check upon the too frequent irregularities that occur in the course of war between maritime nations. The paragraph is a copy of a similar one contained in the fifteenth article of the commercial treaty between France and Great Britain, concluded in 1786, and agrees with the fourteenth article of our treaty with Holland. In order to guard still more effectually against the injuries to which the citizens and subjects may be exposed from the private ships of war of each other, the next paragraph stipulates, that all commanders of privateers, before they receive their commissions, shall be subjected to give security, by at least two responsible sureties, who have no interest in the privateer, in the sum of fifteen hundred pounds sterling, or six thousand six hundred and sixty-six dollars; or, if the privateer is manned with more than one hundred and fifty men, in the sum of three thousand pounds sterling, or thirteen thousand three hundred and thirty-three dollars, to satisfy all damages and injuries committed by such privateers, her officers, or any of her men, against the tenor of the treaty, or the laws and instructions for the regulation of their conduct; and in case of aggression, the commission of such privateer shall be re-called and made void.

This particular regulation has been frequently introduced in modern treaties, and exists in this precise shape in the last treaty of commerce between France and Great Britain; I have found no instance where a larger sum has been mentioned. It has, with little consideration, been made an objection to this regulation, that the amount of the bonds are not adequate to compensate or satisfy the damages that may be committed by these privateers.

The preceding part of the article gives the injured party a remedy against the persons and estates of the aggressors; the bonds are not required for the exclusive purpose of being the fund, to which the injured may have recourse for satisfaction; but principally for the purpose of excluding from the command of privateers, those dissolute and irregular characters, who are not restrained by either moral or political ties, and for whose good behaviour, responsible and disinterested men would not become bondsmen. The same principle is developed in the civil administration of every nation. In cases of pecuniary trust, it is a common and useful precaution, to require surety for the faithful discharge of the office; and the principal advantage of this regulation is to secure the employment of virtuous and upright officers. The amount of the bonds required on these occasions is sufficient for this purpose, though inferior to the property confided to them.

Thus the treasurer of the United States, who has the custody of millions, gives bonds for only one hundred and fifty thousand dollars, the collectors of New York and Philadelphia for fifty and sixty thousand dollars; sums very far short of the public money of which they are in the receipt, yet sufficient to secure the public against characters of doubtful integrity. The adequacy of the sums, in the particular case, is moreover evidenced by the law and practice of our own country. In the resolution of congress, of the third of April 1776, which, so far as regards this point, remained in force throughout the American war, congress required that the commander of every privateer, before his commission should be delivered to him, should give bonds, with sureties, to the president of congress, in the sum of five thousand dollars, if the vessel was of or under one hundred tons; and of ten thousand dollars, if the vessel was upwards of one hundred tons, to observe the rules and instructions prescribed for their government. These sums are one quarter less than those required by the article before us.

The last paragraph requiring the judges of the admiralty courts to furnish formal and duly authenticated copies of their proceedings in cases of the condemnation of vessels or cargoes,

belonging to the citizens or subjects of the parties, is pursuant to that reasonable course of proceeding, which ought always in this and similar cases to prevail.

The twentieth article, which is in prevention of piracy, has the sanction of numerous precedents. A pirate is the common enemy of all mankind.—All, therefore, should unite in refusing him assistance and refuge, and in the establishment of such regulations relative to the sale of his plunder, as, by shutting against him every market, may thereby annihilate the motives to his piracy.

The twenty-first article stipulates, that the citizens and subjects of the parties, shall do no acts of hostility or violence against each other, nor accept commissions or instructions so to act from any foreign state being an enemy to the other party.—That the enemies of either nation shall not be allowed to invite, or endeavour to enlist, in their military service, any of the citizens or subjects of the other; and the laws, prohibiting such offences, are to be punctually executed. The article farther stipulates, if any citizen or subject of either party, who has accepted of a foreign commission to arm a privateer against the other, it shall be lawful for the said party to treat and punish the said citizen or subject, *having such commission*, as a pirate.

The general tenor of this article is in conformity with the spirit of our preceding laws on this subject; it is moreover in perfect unison with the duties of neutrality; those duties which a just regard to the principles of integrity, as well as our enlightened pursuit of our own interest, require us faithfully to perform.

Two objections have been offered against this article; one, that it precludes such of our citizens as, with a view of acquiring military knowledge, would otherwise engage volunteers in foreign service—the other, that it makes every citizen and subject, of either party, who has accepted a foreign commission to arm a privateer against the other, and who shall be taken in possession of such commission, liable to be punished as a pirate.

In respect to the first objection, if, by a rigorous construction, the case is included within the prohibition, it should be remarked, that it is applicable only to such engagements as commence and are made in time of mutual war. If we have citizens, who, with the view of military education, are inclined to engage in foreign service, though from past experience there is not much reason to conclude that the examples would be numerous, they have full scope, as I understand the article, in the periods of peace, to enter into any of the regular armies of

Europe, that they may prefer; and being thus engaged, they are free to make the campaigns of war against Great Britain, if that is their passion, without injuring this article. The prohibition seems to be against engaging in the military service of a nation, previously in the condition of "*enemy*" to one of the parties.

The second objection has even less plausibility than the first; the disingenuous means that have been used to excite a reprobation of this clause of the article, manifest the want of truth and patriotism of those who have employed them: passion and the spirit of opposition have asserted, that the provision before us is so extensive as to place the subordinate officers and private men, on board of a privateer, within the predicament of her commander; nay, that all persons, citizens, or subjects, of either nation, who would accept commissions, or enter, in any capacity, in a foreign army or navy, would, in consequence of this stipulation, be liable to be treated and punished as pirates. It is sufficient, after noticing these attempts to impose upon the public, to observe that the stipulation *expressly* confines the punishment, in question, to the commanders of privateers, who, contrary to the laws of the land, and the clear and equitable obligations of the members of a neutral nation, shall be taken with such commission; and that it does not extend to the under officers or crew, much less to such persons, as, contrary to the preceding inhibition of the article, should accept commissions in a foreign army or navy. In respect to such misdemeanors in all cases (except that of equipping and commanding a privateer, which will expose the commander, when taken, to be punished as a pirate) the offence is cognizable only by the nation within whose jurisdiction the offence is committed, or of which the offender is a citizen, or subject; and, by our laws, is punishable only by fine and imprisonment.

A perversion of the sense of the clause, stipulating, that "the law against all such offences and aggressions shall be punctually executed," has been attempted, though nothing can be more innocent or unexceptionable. Its plain meaning is, that each party, in the cases falling within its jurisdiction, shall faithfully put in execution its own laws against the offences and aggressions, in contravention of the article. A stipulation between the governments, to execute laws on a certain subject, can mean nothing else than that each shall execute its own laws on that subject, in the cases appertaining to its jurisdiction.

Though most of the objections preferred against the treaty are marked with that illiberal spirit which characterizes the

party who have unceasingly laboured to bring into discredit the government of the country, yet few of them have been less veiled than this which condemns a stipulation intended to curb and restrain the few dissolute and daring characters, who, from the least worthy of all motives that lead to military enterprise, might otherwise engage in this piratical warfare.

What virtuous citizen would feel himself justified in accepting such command? What must be the morals of those instructors, who contend for a freedom to commit, what humanity and honor forbid? Every treaty that we have concluded with other nations, is enriched with this stipulation; not only our own treaties but those between other nations contain it. How is it that we no where discover a trace of disapprobation, either on the part of our statesmen, or from an enlightened people, against a series of treaties, formed by different public ministers, and ratified by a succession of congress, each of which contains a provision that the crime of accepting a foreign commission to arm and command a privateer, against a nation with whom we are at peace, shall be treated and punished as piracy? Is it that our virtue has become less severe? our morality more indulgent? or is it that our predecessors were less vigilant in defending the rights of the citizens, than the ostentatious patriots of the present day? But it is time to dismiss an objection entirely destitute of integrity and decency.

CAMILLUS.

 No. XXXV.

THE twenty-second article bears upon its face its own justification—It is pursuant to those maxims which enlightened moralists recommend, and just nations respect. It prescribes a course of conduct the most likely to procure satisfaction for injuries, and to maintain peace, and is therefore entitled to the approbation of all good men and real patriots—It is particularly valuable to a weak nation, or a nation in its infancy, as an additional guard against sudden and unforeseen attacks of more powerful rivals.

The first paragraph of the twenty-third article, provides for the hospitable reception of the public, or national ships of war of the parties, in the ports of each other; and engages that the officers of such ships shall be free from insult, and treated with decorum and respect.

The practice which our government has adopted in relation to these points, independent of parties, is agreeable to this provision. * And though the stipulation will be of less importance to us than it would be, were we possessed of a respectable naval force, yet it may be useful—By our treaty with France, our ships of war have a right to enter their ports only in case of urgent necessity, and not freely and for mere convenience.

With Spain and Portugal we have no treaties, and consequently not an ascertained or perfect right to use their ports—Our navigation must be protected from the Barbary powers by force or by treaty. It is questionable whether the latter mode will prove effectual without the support of the former; congress have therefore resolved to equip a small naval force, for the special object of protecting our trade against the Algerines, and the other Barbary powers. Some port convenient to the scene of its cruising will be of essential advantage to the efficiency and success of its employment: not only the ports of Great Britain, but likewise the port of Gibraltar will, by this article of the treaty, be open to us; and our frigates will be there entitled to a hospitable reception, and their officers to that respect which shall be due to the commissions which they bear.

The other paragraph of this article, provides, in case an American vessel by stress of weather, danger from enemies, or other misfortune, should be obliged to seek shelter in any British port, into which, in ordinary cases, such vessel could not claim to be admitted, that she shall be hospitably received, permitted to refit, and to purchase such necessaries as she may want; and, by permission of the local government, to sell such part of her cargo as may be necessary to defray her expenses—Our treaty with France contains a similar provision; but the restrictions with which it is guarded are less than those of the article before us.

The twenty-fourth article stipulates, that it shall not be lawful for any foreign privateers, commissioned by any nation at war with either of the parties, to arm the vessels, or to sell or exchange their prizes in the ports of either of the parties; and that they shall not be allowed to purchase more provisions than shall be necessary to carry them to the nearest port of the nation from whom they received their commission; and the twenty-fifth article stipulates that the ships of war and privateers of either party, may carry whithersoever they please, the ships

* See Mr. Jefferson's letter of September 9th, 1793, to Mr. Hammand; also his letter, of the same date, to Mr. Van Berckel,

and goods taken from their enemy ; and that such prizes, on their arrival in the ports of the parties, shall not be searched, seized, detained, nor judicially examined touching the validity of their capture, but may freely depart—and furthermore, that no shelter or refuge shall be given in the ports of one of the parties to such as have made prizes upon the citizens or subjects of the other. Though the law of nations is explicit, that one nation having formed a particular stipulation with another, is not capable, by a subsequent treaty with a third nation, to do away, or annul its former stipulations, but that the elder treaty, in such case, remains in full force, notwithstanding such posterior and contradictory treaty ; yet, in order to remove all cavil on this point, and to maintain a scrupulous regard to good faith, even in appearance as well as in reality, and especially in relation to our treaty with France, the article further declares “ that nothing in the treaty contained shall be construed, or operate contrary to former and existing public treaties with other sovereigns or states,” and adds, that neither of the parties, while they continue in friendship, will form any treaty inconsistent with this, and the preceding article—this last clause has been censured as an undue restraint ; while it is in fact a mere redundancy ; as long as a treaty between two nations continues in force, it is against good faith for either to form a treaty with another nation inconsistent with it—if the treaty is once disclosed, by whatever means, no treaty with another nation can be inconsistent with it—The clause, therefore, only converts into an express promise, what without it is an implied one, that the parties will not contravene their stipulations with each other by repugnant engagements with a third party—The dissingenuity on this point has gone so far as to torture the clause into a positive stipulation against any treaty with another power conferring peculiar advantages of commerce upon that power. It is a sufficient reply to this, that the clause is expressly confined to the twenty-fourth and twenty-fifth articles ; determining nothing as to the other articles of the treaty. The general principle of this last objection has been sufficiently discussed elsewhere.

The article concludes with a mutual engagement, that neither of the parties will permit the ships, or goods, of the other to be taken within cannon shot of the coast, nor in any of the bays, ports, or rivers of their territories ; and in case of such capture, the party, whose territorial rights are violated, shall use his utmost endeavours to obtain full satisfaction for the vessels or goods taken. This stipulation is conformable to the duty and practice of nations who have entered into no special en-

gagements requiring the same, and agrees with a common provision in public treaties.

Hitherto we have prudently avoided granting to any nation a right to arm their privateers or to sell their prizes in our ports; our laws are explicit in prohibiting such equipments; and the exclusion thereof, contained in the twenty-fourth article, is agreeable to the declared policy of the country. We have engaged in our treaty with France to prohibit her enemies from selling their prizes within our ports; but not having engaged to permit France to sell her prizes therein, we were free to agree with Great Britain, that her enemies shall, likewise, be prohibited from selling their prizes within our territory. A clause in the twenty-fifth article denies all refuge to the ships of war and privateers that have made prizes upon either of the parties; and the last clause of the twenty-fourth article stipulates, that foreign privateers, enemies to either of the parties, shall not be allowed to purchase more provisions than sufficient to carry them to the nearest port of the nation from whom they received their commissions.

These clauses will operate only against such nations as have not, by an elder treaty, secured a right of reception in the ports of the parties—Still, however, it is alleged that these articles violate our treaty with France. It has already been observed that the treaty contains a clear and explicit agreement of the parties, excepting from its operation all former existing public treaties—Our treaty with France is an antecedent and existing public treaty, and consequently excepted, in all its parts, from the operation of the treaty before us—Whatever right or privilege, therefore, is secured to France in virtue of that treaty, she will continue to enjoy, whether the same respects the reception of her public ships of war, privateers or prizes, in our ports, or the exclusion therefrom of those of her enemies.

Could there be a doubt on this point, the practice of other nations, and especially that of France, on the very point, would effectually remove it.—The fifteenth and thirty-sixth articles of the commercial treaty of Utrecht, between France and Great Britain, contain the same stipulations as the twenty-fourth and twenty-fifth articles of the treaty before us. That treaty was in existence and force, at the time of forming our treaty with France, yet France found no difficulty in the insertion of the same stipulations in her treaty with us. She could not have considered their insertion in the treaty with us as a violation of her treaty with Great Britain, otherwise good faith would have restrained her—The war that soon after took place between

France and Great Britain, dissolved the treaty of Utrecht. Our treaty with France remained in force; yet, in the year one thousand seven hundred and eighty-six, France and Great Britain entered into a commercial treaty, the sixteenth and fortieth articles of which renew the stipulations contained in the fifteenth and thirty-sixth articles of the treaty of Utrecht.

If France was free, first to form these stipulations with us, in 1778, notwithstanding her prior and existing treaty with us, we must be equally free in a treaty with the same, or any other power, to agree to similar stipulations. Both were free, and neither violates their former engagements, by assenting, as we have done, to these stipulations in a posterior treaty.

It is further alleged, that these articles are injurious to the interest of the United States, because they prohibit, in certain cases, foreign privateers to rendezvous in our ports, and to sell within our territory, the prizes they may have taken.—If it is desirable to render our principal sea ports and cities scenes of riot and confusion, if it is politic to divide our citizens, by infusing into their minds the hostile spirit with which the nations at war are animated against each other, if we are prepared to see the prostration of public authority, and to behold the laws trampled upon by armed banditti, if we are ready to invite our citizens to abandon their regular and useful employments, and to engage, as adventurers, even against each other, in the pursuit of plunder, then is the objection well-founded, then is the restraint pernicious, then is the stipulation worthy of condemnation.—But if to establish the reverse of all this, is the effort and aim of every wise and prudent government, the stipulation in question demands the approbation of all virtuous citizens.

But were none of these consequences to be apprehended from the free admission of the privateers of all nations engaged in war, and the permission to sell their plunder, it would, notwithstanding, be against the interests of the United States to allow the same. It is a sound commercial principle, that the interest of buyers, as well as sellers, is best promoted by a free competition.—The great number of the sellers of foreign manufactures and productions, afford the best market for the buyers.—The great number of buyers of our productions, afford the best market for the sellers—foreign privateers are precarious sellers, and buyers only for their own consumption.—They drive away and banish from our markets, both buyers and sellers. When our coasts are lined with foreign privateers that rendezvous in our ports, the merchant ships of all nations, not excepting our own, will be liable to interruption, and discouraged from coming to our markets; and those of the belligerent

powers will be generally excluded—Our markets might, perhaps, derive supplies from the prizes that such privateers should take, so as, in some degree, to compensate for the deficiency that would proceed from the exclusion of foreign merchantmen; but this supply would be uncertain, irregular, ill-assorted, and partial, while the principal commercial detriment would exist without mitigation, that of a partial or total destruction of foreign competition in the purchase of our agricultural and other productions.

If, moreover, it is the duty, as well as the interest, of the United States, to observe an exact and scrupulous neutrality, amidst the wars of other nations, one of the most efficacious means of effecting that purpose, will be, to remove every temptation that might lead our citizens to an opposite course—No allurements would be more likely to seduce them from their duty than that which is offered by the expected gains of privateering—no avenue of political mischief should, therefore, be more carefully closed.

If these articles are exceptionable, in any respect, it is that in imitation of the analogous articles in our treaty with France, they allow the privateers of the parties, in cases not inconsistent with former treaties, to rendezvous in, and their prizes to be brought into, each others ports and harbours: It would, in my judgment, have been the true policy of the United States, as well as with the view of maintaining an impartial and decided neutrality in the wars of Europe, from a participation in which our remote situation, with due prudence, is an exemption; as likewise, in order to promote, in the most advantageous manner, our national prosperity, totally and for ever to have excluded all foreign privateers and prizes from our ports and harbours.

But having entered into these stipulations with France, by which she has the use of all our ports against all other nations, we having the use of her ports only against those nations who have not an elder treaty with her, it would have manifested an unwise partiality to have refused to enter into similar stipulations with other nations who might desire them.

The twenty-sixth article provides, in case of a rupture between the parties, that the merchants and others of each nation, residing in the dominions of the other, may remain and continue their trade during good behaviour; in case, however, their conduct should become suspicious, they may be removed, and a twelvemonth after the publication of the order of removal is to be allowed for that purpose: But this term is not to be granted to such persons as act contrary to law, or are guilty of

any offence against the government: all such persons may be forthwith removed or sent out of the respective dominions of the parties. The residue of the article is calculated to ascertain the condition of the parties, when the rupture shall be deemed to exist—each nation remains the exclusive judge of the foreigners among them, and will be able to decide from their behaviour, how far their residence may be compatible with the public safety. In case of suspicion only, that their residence will prove detrimental, they may order them to depart, reasonable time being allowed them to collect their effects—On the one hand, the article affords to the parties perfect security against the irregular and suspicious conduct of foreigners, who may be among them on the breaking out of war, and, on the other, consults with that liberality which the modern usage of nations sanctions, the safety and convenience of those, who, under the faith of the respective governments, have chosen a residence in the dominions of the parties.—Our treaties with France, Holland, and Sweden, secure to the merchants of the respective parties a limited period, after the commencement of war, within which they may collect their effects, and remove; and the article before us relative to this subject, is a transcript of the second article of the treaty of commerce, of 1786, between France and Great Britain—The objection, therefore, to there being a certain term within which they cannot be removed upon bare suspicion lies against our other treaties and against almost all the treaties of Europe for many years—The pretence to order away upon mere suspicion would defeat all the stipulations, that allow a certain term to collect, sell, and remove debts and effects; and for that reason could not be supported.

The remainder of the article which gives an option to each party, either to request the recall, or *immediately to send home*, the ambassador of the other without prejudice to their mutual friendship and good understanding, is a valuable feature—The power "*immediately to send home*," without giving offence, avoids much delicate embarrassment connected with an application to recall—It renders it easier to arrest an intriguing minister in the midst of a dangerous intrigue, and it is a check upon the minister by placing him more completely in the power of the government with which he resides.—These last circumstances are particularly important to a republic, one of the chief dangers of which, arises from its exposure to foreign intrigue and corruption.

The twenty-seventh article, which provides for the delivery of all persons, charged with murder or forgery committed within the jurisdiction of one party, and who have taken re-

fuge within the territories of the other, is a regulation of peculiar worth between nations whose territories are contiguous to each other—Without such regulation, the ease, with which the perpetrators of these atrocious crimes, might escape punishment, especially on the frontiers, by passing out of one jurisdiction into the other, would, in a great measure, destroy the security against these offences, that arises from the fear and certainty of punishment—The provision, that such delivery shall not be made unless upon the exhibition of such evidence of criminality, as, according to the laws of the place where the fugitive shall be found, would justify his apprehension and commitment for trial, if the crime had there been committed, will prevent vexatious requisitions, and is a caution due to the rights of individuals.

The twenty-seventh, and concluding article, establishes, that the first ten articles of the treaty, shall be permanent; that the remaining ones, except the twelfth, which, with the twenty-fifth, constitute the body of the commercial part of the treaty, shall be limited in their duration to twelve years; and reciting, that the twelfth will end, by its own limitation, at the end of two years after the termination of the present European war, further establishes, that, within the last mentioned term, and in time to perfect the business by the expiration of that term, the discussion of the subject of the twelfth article shall be renewed, and if the parties cannot agree on such new arrangement, concerning it, as may be satisfactory, that then all the said remaining articles (in other words, all but the first ten) shall cease and expire together. This article, which is an entirely independent one, obviates the doubt, affected to be entertained, whether the exception in the ratification, with regard to the twelfth article, did not do away the stipulation by which the continuance of the treaty, except the first ten articles, beyond the term of two years, after the expiration of the war, is made to depend on a further arrangement of the West India trade. This separate article is positive and conclusive, absolutely annulling the treaty at that time, if such an arrangement be not made, and thereby places it in the power of either party so to manage the matter as to put an end to all the commercial part of it, except what relates to inland trade and navigation with the neighbouring British territories, at the end of the short period of two years from the termination of the existing war. This alone is sufficient to confound all the high-charged declamations against the tendency of the treaty to ruin our trade and navigation.

IT is now time to fulfil my promise of an examination of the constitutionality of the treaty. Of all the objections which have been contrived against this instrument, those relating to this point are the most futile—If there be a political problem capable of complete demonstration, the constitutionality of the treaty, in all its parts, is of this sort—It is even difficult to believe, that any man in either house of congress, who values his reputation for discernment or sincerity, will publicly hazard it by a serious attempt to controvert the position.

It is, nevertheless, too much a fashion with some politicians, when hard pressed on the expediency of a measure, to entrench themselves behind objections to its constitutionality—Award that there is naturally in the public mind a jealous sensibility to objections of that nature, which may predispose against a thing otherwise acceptable, if even a doubt, in this respect, can be raised—They have been too forward to take advantage of this propensity, without weighing the real mischief of the example. For, however it may serve a temporary purpose, its ultimate tendency is, by accustoming the people to observe, that alarms of this kind are repeated with levity and without cause, to prepare them for distrusting the cry of danger, when it may be real: Yet the imprudence has been such, that there has scarcely been an important public question, which has not involved more or less of this species of controversy.

In the present case, the motives of those who may incline to defeat the treaty, are unusually strong for creating, if possible, a doubt concerning its constitutionality.

The treaty, having been ratified on both sides, the dilemma plainly is between a violation of the constitution, by the treaty, and a violation of the constitution, by obstructing the execution of the treaty.

The VIth. article of the constitution of the United States, declares, that “ the constitution and the laws of the United States, made in pursuance thereof, *all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land*, any thing in the constitution or laws of any state to the contrary notwithstanding ” A law of the land, till revoked or annulled, by the competent authority, is binding, not less on each branch or department of the government than on each individual of the society—Each house of congress collectively, as well as the members of it separately, are under a constitutional obligation to observe the injunctions of a pre-

existing law, and to give it effect.—If they act otherwise, they infringe the constitution; the theory of which knows, in such case, no discretion on their part—To resort to first principles for their justification, in assuming such a discretion, is to go out of the constitution for an authority, which they cannot find in it—it is to usurp the original character of the people themselves—it is, in principle, to prostrate the government.

The cases must be very extraordinary that can excuse so violent an assumption of discretion. They must be of a kind to authorize a revolution in government;—for every resort to original principles, in derogation from the established constitution, partakes of this character.

Recalling to view, that all but the first ten articles of the treaty are liable to expire at the termination of two years after the present war; if the objection to it in point of constitutionality cannot be supported—let me ask, who is the man hardy enough to maintain, that the instrument is of such a nature as to justify a revolution in government?

If this can be answered in the affirmative, adieu to all the securities which nations expect to derive from constitutions of government. They become mere bubbles, subject to be blown away by every breath of party—The precedent would be a fatal one—Our government, from being fixed and limited, would become revolutionary and arbitrary—All the provisions which our constitution, with so much solemnity, ordains “for forming a more perfect union, establishing justice, insuring domestic tranquility, providing for the common defence, promoting the general welfare, and securing the blessings of liberty to ourselves and posterity,” evaporate and disappear—

Equally will this be the case, if the rage of party spirit can meditate, if the momentary ascendancy of party, in a particular branch of the government, can effect, and if the people can be so deceived as to tolerate—that the *pretence* of a violation of the constitution shall be made the instrument of its actual violation.

This, however, cannot be—There are already convincing indications on the very subject before us, that the good sense of the people will triumph over prejudice and the acts of party—that they will finally decide according to their true interest, and that any transient or partial superiority, which may exist, if abused for the purpose of infracting the constitution, will consign the perpetrators of the infraction to ruin and disgrace. But alas! what consolation would there be in the ruin of a party for the ruin of the constitution?

It is time to enter on the momentous discussion. The question shall be examined in the four following views—1. In relation to the theory of the constitution—2. In relation to the manner in which it was understood by the convention who framed it, and by the people who adopted it—3. In relation to the practice upon a similar power in the confederation—4. In relation to the practice under our present constitution, prior to the treaty with Great Britain—In all these views, the constitutionality of the treaty can be vindicated beyond the possibility of a serious doubt.

1. As to the theory of the constitution—The constitution of the United States distributes its powers into three departments, legislative, executive, judiciary.—The first article defines the structure, and specifies the various powers, of the legislative department—The second article establishes the organization and powers of the executive department—The third article does the same with respect to the judiciary department—The fourth and fifth, and sixth articles, which are the last, are a miscellany of particular provisions.

The first article declares that “all *legislative power* granted by the constitution shall be vested in a congress of the United States, which shall consist of a senate and a house of representatives.”

The second article, which organizes and regulates the executive department, declares that the “*executive power* shall be vested in a president of the United States of America;” and proceeding to detail particular authorities of the executive, it declares that the “president shall have power, by and with the advice and consent of the senate, *to make treaties*, provided two-thirds of the senators present concur.” There is in no part of the constitution any explanation of this power to make treaties, any definition of its objects, or delineation of its bounds—The only other provision in the constitution respecting it, is in the sixth article, which provides, as already noticed, that all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land;—and this notwithstanding any thing in the constitution or laws of any state to the contrary.

It was impossible for words more comprehensive to be used than those which grant the power to make treaties. They are such as would naturally be employed to confer a *plenipotentary* authority—A power “to make treaties,” granted in these indefinite terms, extends to all kinds of treaties, and with all the latitude which such a power, under any form of government, can possess—the power “to make” implies a power to act *auth-*

ritatively and conclusively, independent of the after-clause which expressly places treaties among the supreme laws of the land. The thing to be made is a treaty.

With regard to the objects of the treaty, there being no specification, there is, of course, a *charte blanche*. The general proposition must, therefore, be, that whatever is a proper subject of compact, between nation and nation, may be embraced by a treaty between the president of the United States, with the advice and consent of the senate, and the correspondent organ of a foreign state.

The authority being general, it comprizes, of course, whatever cannot be shown to be necessarily an exception to it.

The only constitutional exception to the power of making treaties is, that it shall not change the constitution; which results from this fundamental maxim, that a delegated authority cannot alter the constituting act, unless so expressly authorized by the constituting power. An agent cannot new-model his own commission.—A treaty, for example, cannot transfer the legislative power to the executive department, nor the power of this last department to the judiciary; in other words, it cannot stipulate that the president, and not congress, shall make laws for the United States, that the judges, and not the president, shall command the national forces.

Again, there is also a *national* exception to the power of making treaties, as there is to every other delegated power, which respects abuses of authority in palpable and extreme cases. On natural principles, a treaty, which should manifestly betray or sacrifice the private interests of the state, would be null. But this presents a question foreign from that of the modification or distribution of constitutional powers. It applies to the case of the pernicious exercise of a power, where there is legal competency. Thus the power of treaty, though extending to the right of making alliances offensive and defensive, might not be exercised in making an alliance, so injurious to the state as to justify the non-observance of the contract.

Beyond these exceptions to the power, none occurs that can be supported.

Those which have been insisted upon, towards invalidating the treaty with Great Britain, are not even plausible. They amount to this, that a treaty can establish nothing between the United States and a foreign nation, which it is the province of the legislative authority to regulate in reference to the United States alone. It cannot, for instance, establish a particular rule of commercial intercourse between the United States and Great Britain; because it is provided in the constitu-

tion, that congress “*shall have power to regulate commerce with foreign nations.*” This is equivalent to affirming that all the objects upon which the legislative power may act, in relation to our country, are excepted out of the power to make treaties.

Two obvious considerations refute this doctrine. One, that the power to make treaties, and the power to make laws, are different things, operating by different means, upon different subjects; the other, that the construction resulting from such a doctrine would defeat the power to make treaties, while its opposite reconciles this power with the power of making laws.

The power to make laws is, “the power of pronouncing authoritatively the will of the nation as to all persons and things over which it has jurisdiction:” or it may be defined to be “the power of prescribing rules binding upon all persons and things over which the nation has jurisdiction.” It acts compulsively upon all persons, whether foreigners or citizens, and upon all things within the territory of such nation, and also upon its own citizens and their property without its territory in certain cases and under certain limitations. But it can have no obligatory action whatsoever upon a foreign nation or upon any person or thing within the jurisdiction of a foreign nation.

The power of treaty, on the other hand, is the power by *agreement, convention, or compact*, to establish rules binding upon two or more nations, their respective citizens and property. The rule established derives its reciprocal obligation from promise, from the faith which the contracting parties pledge to each other—not from the power of either to prescribe a rule for the other. It is not here the will of a *superior* that commands; it is the consent of two independent parties that contract.

The *means* which the power of legislation employs, are *laws* which it enacts, or rules which it enjoins; the *subject* upon which it acts is the nation of whom it is, the persons and property within the jurisdiction of the nation. The *means*, which the power of treaty employs, are *contracts* with other nations, who may or may not enter into them—The *subjects* upon which it acts are the nations contracting and those persons and things of each to which the contract relates—Though a treaty may effect what a law can, yet a law cannot effect what a treaty does. These discriminations are obvious and decisive; and however the operation of a treaty may, in some things, resemble that of a law, no two ideas are more distinct, than that of *legislating* and that of *contracting*.

It follows that there is no ground for the inference pretended to be drawn, that the legislative powers of congress are excepted out of the power of making treaties. It is the province of the latter to do what the former cannot do—Congress (to pursue still the case of regulating trade) may regulate by law, our own trade and that which foreigners come to carry on with us; but they cannot regulate the trade which we may go to carry on *in foreign* countries; they can give to us no rights, no privileges there. This must depend on the will and regulations of those countries; and, consequently, it is the province of the power of treaty to establish the rules of commercial intercourse *between* foreign nations and the United States. The legislative may regulate our own trade, but treaty only can regulate the national trade between our own and another country.

The constitution accordingly considers the power of treaty as different from that of legislation. This is proved in two ways, I. That while the constitution declares that all the *legislative* powers which it grants shall be vested in congress, it vests the power of making treaties in *the president* with consent of the senate. II. That the same article by which it is declared that the *executive* power shall be vested in a president, and in which fundry executive powers are detailed, gives the power to make treaties to the president, with the auxiliary agency of the senate. Thus the power of making treaties is placed in the class of executive authorities; while the force of laws is annexed to its results. This agrees with the distribution commonly made by theoretical writers, though perhaps the power of treaty, from its peculiar nature, ought to form a class by itself.

When it is said, that congress shall have power to regulate commerce with foreign nations, this has reference to the distribution of the general legislative power of regulating trade between the national and the particular governments; and serves merely to distinguish the right of regulating our external trade, as far as it can be done by law, which is vested in congress, from that of regulating the trade of a state within itself, which is left to each state.

This will the better appear from the entire clause. "The congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes," which is the same as if it had been said, The whole powers of regulating trade *by law* shall reside in congress, except as to the trade within a state, the power to regulate which shall remain with such state. But it is clearly foreign to that mutual regulation of trade between the United States and other nations, which, from the necessity of mutual consent, can only be per-

formed by treaty. It is indeed an absurdity to say, that the power of regulating trade by law is incompatible with the power of regulating it by treaty; since the former can, by no means, do what the latter can alone accomplish; consequently, it is an absurdity to say, that the *legislative* power of regulating trade is an exception to the power of making treaties.

Laws are the acts of legislation of a particular nation for itself. Treaties are the acts of the legislation of several nations for themselves jointly and reciprocally. The legislative powers of one state cannot reach the cases which depend on the joint legislation of two or more states. For this, resort must be had to the *pactitious* power, or the power of treaty—This is another attitude of the subject, displaying the fallacy of the proposition, that the legislative powers of congress, are exceptions to, or limitations of, the power of the president, with the aid of the senate, to make treaties.

C A M I L L U S.

No. XXXVII.

IT shall now be shown, that the objections to the treaty, founded on its pretended interference with the power of congress, tend to render the power of making treaties, in a very great degree, if not altogether, nominal—This will be best seen by an enumeration of the cases of pretended interference.

1st, The power of congress to lay taxes, is said to be impaired by those stipulations which prevent the laying of duties on particular articles; which also prevent the laying of higher or other duties on British commodities than on the commodities of other countries, and which restrict the power of increasing the difference of duties on British tonnage and on goods imported in British bottoms.

2d, The power of congress to regulate trade is said to be impaired by the same restrictions respecting duties, in as much as they are intended, and operate, as regulations of trade—by the stipulations against prohibitions in certain cases; and, in general, by all the rights, privileges, immunities, and restrictions in trade, which are contained in the treaty; all which are so many regulations of commerce, which are said to encroach upon the legislative authority.

3d, The power of congress to establish an uniform rule of naturalization, is said to be interfered with, by those provisions

of the treaty which secure to the settlers, within the precincts of the British posts, the right of becoming citizens of the United States, and those which, in certain cases, remove the disability of alienism as to property.

4th, The power of congress "to define and punish piracies and felonies, committed on the high seas, and offences against the law of nations," is said to be contravened by those parts of the treaty, which declare that certain acts shall be deemed piracy, which constitute certain other things offences, and stipulate the reciprocal punishment of them by each.

5th, It is also said that the constitution is violated, in relation to that provision which declares, that "no money shall be drawn from the treasury but in consequence of appropriations made by law"—by those parts of the treaty which stipulate compensations to certain commissioners, and indemnifications to Great Britain, in certain cases to be adjusted and pronounced by the commissioners; and generally, by all those parts which may involve an expenditure of money.

6th, The constitution is said to be violated in that part which empowers congress to dispose of, and make all needful rules and regulations respecting the *territory*, or other property of the United States, by those provisions of the treaty which respect the adjustment of boundary in the cases of the rivers St. Croix and Mississippi.

Lastly, The constitution is said to be violated, in its provisions concerning the judiciary department, by those parts of the treaty which contemplate the confiding to the determination of commissioners certain questions between the two nations.

A careful inspection of the treaty with these objections in view, will discover, that of the 28 articles which compose it, at least seventeen are involved in the charge of unconstitutionality; and that these seventeen comprise all the provisions which adjust past controversies, or establish rules of commercial intercourse between the parties—The other eleven, which are the 1st, 10th, 17th, 18th, 19th, 20th, 22d, 23d, and 24th, except the first, are made up of provisions which have reference to war; the first merely declaring that there shall be peace between the parties—And it is a question, even with respect to all of these, except the 1st, and 10th, whether they also are not implicated in the charge; in as much as some of their dispositions have commercial relations. Is not this alone sufficient to bring under a strong suspicion the validity of the principles which impeach the constitutionality of the instrument?

It must have been observed that the argument in the last number is applicable to all the legislative powers of congress, as well as to that of regulating trade, which was selected, by way of illustration, on the ground of its being common to all—Indeed the instance of the regulations of trade is that which is most favorable to the opposite doctrine—Since foreign nations are named in the clause; the true intent of which, however, has been explained.

The same reasoning, too, would extend the power of treaties to those objects which are consigned to the legislation of individual states; but here the constitution has announced its meaning in express terms, by declaring, that the treaties which have been and shall be made under the authority of the United States, shall be the supreme law of the land, any thing in the constitution or laws of any state to the contrary notwithstanding—This manifestly recognizes the supremacy of the power of treaties over the laws of particular states, and goes even a step farther.

The obvious reason for this special provision, in regard to the laws of individual states, is, that there might otherwise have been room for question—whether a treaty of the union could embrace objects, the internal regulation of which belonged to the separate authorities of the states. But with regard to the United States there was no room for a similar question.

The power of treaty could not but be supposed commensurate with all these objects to which the legislative power of the union extended, which are the proper subjects of compacts with foreign nations.

It is a question among some theoretical writers—whether a treaty can repeal *pre-existing laws*? This question must always be answered by the particular form of government of each nation. In our constitution, which gives, *ipso facto*, the force of law, to treaties, making them equal with the acts of congress, the supreme law of the land, a treaty must necessarily repeal an antecedent law contrary to it; according to the legal maxim that “*leges posteriores priores contrarias abrogant.*”

But even in those forms of government, in which there may be room for such a question, it is not understood that a treaty containing stipulations which require the repeal of antecedent laws, is, on that account, unconstitutional and null. The true meaning is, that the antecedent laws are not, *ipso facto*, abrogated by the treaty—But the legislature is, nevertheless, bound in good faith, under the general limitation, stated in another place, to lend its authority to remove obstacles which previous laws might oppose to a fair execution of a treaty.

One instance of the inconsistency, prevailing in the arguments against the treaty, negotiated by Mr. Jay, is observable in this point. To get rid of the infractions of our treaty of peace with Great Britain by certain laws of particular states, it is strenuously maintained that treaties controul the laws of states. To impeach the constitutionality of the treaty under consideration, it is objected, that, in some points, it interferes with the objects of state legislation. The express provision of the constitution in this particular, quoted above, has not been sufficient to check the rage for objection.

The absurdity of the alleged interferences will fully appear, by showing how they would operate upon the several kinds of treaties usual among nations. These may be classed under three principal heads. 1. Treaties of commerce, 2. Treaties of alliance, 3. Treaties of peace.

Treaties of commerce are, of course, excluded; for every treaty of commerce is a system of rules devised to regulate and govern the trade between contracting nations; invading directly the exclusive power of regulating trade which is attributed to congress.

Treaties of alliance, whether defensive or offensive, are equally excluded, and this on two grounds—1. Because it is their immediate object to decline a case or cases in which one nation shall take part with another in war, contrary, in the sense of the objection, to that clause of the constitution which gives to congress the power of declaring war; and 2. Because the succours stipulated, in whatever shape they may be, must involve an expenditure of money—not to say, that it is common to stipulate succours in money, either in the first instance or by way of alternative. It will be pertinent to observe incidentally, in this place, that even the humane and laudable provision in the seventeenth article, which all have approved, is within the spirit of the objection; for the effect of this is to restrain the power and discretion of congress to grant reprisals, till there has been an unsuccessful demand of justice. Nothing can better illustrate the unreasonable tendency of the principle.

Treaties of peace are also excluded, or, at the least, are so narrowed as to be in the greatest number of cases impracticable—The most common conditions of these treaties are restitutions or cessions of territory, on one side or on the other, frequently on both sides, regulations of boundary—restitutions and confirmations of property—pecuniary indemnifications for injuries or expenses—It will, probably, not be easy to find a precedent of a treaty of peace, which does not contain one or more of these provisions, as the basis of the cessation of hosti-

ties, and they are all them naturally to be looked for in an agreement which is to put an end to the state of war between conflicting nations.

Yet they are all precluded by the objections which have been enumerated: pecuniary indemnifications, by that which respects the appropriations of money; restitutions or cessions of territory or property, regulations of boundary, by that which respects the right of congress to dispose of, and make all needful rules and regulations concerning the territory and property of the United States—It is to be observed, likewise, that cessions of territory are almost always accompanied with stipulations in favor of those, who inhabit the ceded territory, securing personal privileges and private rights of property; neither of which could be acceded to on the principles of that objection, which relates to the power of naturalization; for this power has reference to two species of rights, those of privilege and those of property. An act allowing a foreigner to hold real estate is so far an act of naturalization; since it is one of the consequences of alienism, not to be able to hold real estate.

It follows, that if the objections which are taken to the treaty, on the point of constitutionality, are valid, the president, with the advice and consent of the senate, can make neither a treaty of commerce nor alliance, and rarely, if at all, a treaty of peace. It is probable, that on a minute analysis, there is scarcely any species of treaty which would not clash, in some particular, with the principle of those objections; and thus, as was before observed, the power to make treaties, granted in such comprehensive and indefinite terms, and guarded with so much precaution, would become essentially nugatory.

This is so obviously against the principles of sound construction, it, at the same time, exposes the government to so much impotence in one great branch of political power, in opposition to a main intent of the constitution—and it tends so directly to frustrate one principal object of the situation of a general government, the convenient management of our external concerns, that it cannot but be rejected by every discerning man who will examine and pronounce with sincerity. It is against the principles of sound construction; because these teach us, that every instrument is so to be interpreted, as that all the parts may, if possible, consist with each other, and have their effect. But the construction which is combated would cause the legislative power to destroy the power of making treaties. Moreover, if the power of the executive department be inadequate to the making of the several kinds of treaties, which have been mentioned, there is, then, no power in the govern-

ment to make them; for there is not a syllable in the constitution which authorizes either the legislative or judiciary departments, to make a treaty with a foreign nation. And our constitution would then exhibit the ridiculous spectacle of a government without a power to make treaties with foreign nations: a result as inadmissible as it is absurd; since, in fact, our constitution grants the power of making treaties, in the most explicit and ample terms, to the president, with the advice and consent of the senate. On the contrary, all difficulty is avoided, by distinguishing the province of the two powers, according to ideas which have been always familiar to us, and which were never exposed to any question till the treaty with Great Britain gave exercise to the subtleties of party spirit.

By confining the power to make laws within its proper sphere, and restricting its actions to the establishment of rules for our own nation and those foreigners who come within our jurisdiction—and by assigning to the power of treaty the office of concerting those rules of mutual intercourse and connexion, between us and foreign nations, which require their consent as well as our own; allowing to it the latitude necessary for this purpose, a harmonious agreement is preserved between the different powers of the government: that to make laws, and that to make treaties; between the authority of the legislative and the authority of the executive department—Hence,

Though congress, by the constitution, have power to lay taxes, yet a treaty may restrain the exercise of it in particular cases. For a nation, like an individual, may abridge its moral power of action by agreement; and the organ charged with the legislative power of a nation may be restrained in its operation by the agreements of the organ of its *federative* power, or power to contract: let it be remembered, that the nation is the *constituent*, and that the executive, within its sphere, is no less the organ of its will than the legislature.

Though congress are empowered to make regulations of trade, yet they are not exclusively so empowered.—But regulations of trade may also be made by treaty; and, where other nations are to be bound by them, must be made by treaty.

Though congress are authorized to establish a uniform rule of naturalization, yet this contemplates only the ordinary cases of internal administration, in particular and extraordinary cases, those in which the pretensions of a foreign government are to be managed—a treaty may also confer the rights and privileges of citizens; thus the absolute cession and plenary dominion of a province or district, possessed by our arms in war, may be

accepted by the treaty of peace, on the condition, that its inhabitants shall, in their persons and property enjoy the privileges of citizens.

The same reasoning applies to all the other instances of supposed infraction of the legislative authority:—with regard to piracies and offences against the laws of nations; with regard to expenditures of money, with regard to the appointment of officers, with regard to the judiciary tribunals, with regard to the disposal and regulation of the national territory and property—In all these cases, the power to make laws and the power to make treaties are concurrent and co-ordinate—The latter, and not the former, must act, where the co-operation of other nations is requisite.

As to what respects the commissioners agreed to be appointed, they are not, in a strict sense, *officers*. They are *arbitrators* between the two countries. Though in the constitutions, both of the United States and of most of the individual states, a particular mode of appointing officers is designated—Yet, in practice, it has not been deemed a violation of the provision to appoint commissioners or special agents for special purposes, in a different mode.

As to the provision, which restricts the issuing of money from the treasury, to cases of appropriation by law, and which, from its intrinsic nature, may be considered as applicable to the exercise of every power of government, it is, in no sort, touched by the treaty. In the constant practice of the government, the cause of an expenditure, or the contract which incurs it, is a different thing from the appropriation for satisfying it. Thus the salary of a public officer is fixed by one law, the appropriation for its payment by another. So, the treaty only stipulates what may be a cause of expenditure. An appropriation by law will still be requisite for actual payment.

As to the disposal and regulation of the territory and property of the United States, this will be naturally understood of dispositions and regulations purely domestic, and where the title is not disputed by a foreign power. Where there are interfering claims of foreign powers, as neither will acknowledge the right of the other to decide, treaty must directly or indirectly adjust the dispute.

So far then it is from being true, that the power of treaty can extend to nothing upon which, in relation to ourselves, the legislative power may act—that it may rather be laid down as a general rule, that a treaty may do between different nations whatever the legislative power of each may do with regard to itself. The exceptions to this rule are to be deduced from the

unfitness and inconvenience of its application to particular cases, and are of the nature of abuses of a general principle.

In considering the power of legislation in its relations to the power of treaty, instead of saying, that the objects of the former are excepted out of the latter, it will be more correct, indeed it will be entirely correct, to invert the rule, and to say, that the power of treaty is the power of making exceptions, in particular cases, to the power of legislation. The stipulations of treaty are, in good faith, restraints upon the exercise of the last mentioned power. Where there is no treaty, it is completely free to act. Where there is a treaty; it is still free to act in all the cases not specially excepted by the treaty. Thus, congress is free to regulate trade with a foreign nation, with whom we have no treaty of commerce, in such manner as they judge for the interest of the United States; and they are also free so to regulate it with a foreign nation with whom we have a treaty, in all the points which the treaty does not specially except. There is always, therefore, great latitude for the exercise of the legislative power of regulating trade with foreign nations, notwithstanding any treaties of commerce which may be formed.

The effects of a treaty to impose restraints upon the legislative power, may, in some degree, be exemplified by the case of the compacts which the legislature itself makes, as with regard to the public debt. Its own compacts are, in good faith, exceptions to its power of action. Treaties with foreign powers, for obvious reasons, are much stronger exceptions.

C A M I L L U S.

No. XXXVIII.—AND LAST.

THE manner in which the power of treaty, as it exists in the constitution, was understood by the convention in framing it, and by the people in adopting it, is the point next to be considered.

As to the sense of the convention, the secrecy with which their deliberations were conducted, does not permit any formal proof of the opinions and views which prevailed in digesting the power of treaty—But from the *best opportunity of knowing the fact*, I aver, that it was understood *by all*, to be the intent of the provision to give to that power the most ample latitude—to render it competent to all the stipulations, which the

exigencies of national affairs might require; competent to the making of treaties of alliance, treaties of commerce, treaties of peace, and every other species of convention usual among nations; and competent, in the course of its exercise for these purposes, to controul and bind the legislative power of congress—And it was emphatically for this reason, that it was so carefully guarded; the co-operation of two-thirds of the senate, with the president, being required to make any treaty whatever—I appeal for this, with confidence, to every member of the convention——particularly to those in the two houses of congress. Two of these are in the house of representatives, Mr. Madison and Mr. Baldwin: It is expected, by the adversaries of the treaty, that these gentlemen will, in their places, obstruct its execution—However this may be, I feel a confidence that neither of them will deny the assertion I have made—to suppose them capable of such a denial were to suppose them utterly regardless of truth. But, though direct proof of the views of the convention on the point, cannot be produced;—yet we are not wholly without proof on this head.

Three members of the convention dissented from the constitution; Mr. Mason, Mr. Gerry, and Mr. Randolph. Among the reasons for his dissent, published by Mr. Mason, we find this clause, “By declaring all treaties supreme laws of the land, the executive and senate have, *in many cases*, an *exclusive power of legislation*, which might have been avoided by proper distinctions with respect to treaties, and *requiring the assent of the house of representatives* where it could be done with safety.”—This shows the great extent of the power, in the conception of Mr. Mason: *in many cases* amounting to an *exclusive power of legislation*; nor did he object to the extent, but only desired that it should have been further guarded, by certain distinctions, and by requiring, in certain cases, the assent of the house of representatives.

Among the objections to the constitution, addressed by Mr. Gerry to the legislature of Massachusetts, we find one to have been, “that treaties of the *highest importance* might be formed by the president, with the advice of two-thirds of a *quorum* of the senate.”—This shows his idea of the magnitude of the power; and impliedly admitting with Mr. Mason, the propriety of its extent, he seems only to have desired that the concurrence of the senate should have embraced two-thirds of the *whole body*, instead of two-thirds of a *quorum*. But how small and how insignificant would the power of treaty be, according to the doctrine lately promulgated, with regard to its constitutional limit?

As to the sense of the community in the adoption of the constitution, this can only be ascertained from two sources, the writings for and against it, and the debates in the several state conventions—while it was under consideration.

I possess not, at this moment, materials for an investigation, which would enable me to present the evidence they afford—But I refer to them, with confidence, for proof of the fact, that the organization of the power of treaty, in the constitution, was attacked and defended with an admission on both sides, of its being of the character which I have assigned to it—Its great extent and importance—its effect to controul, by its stipulations, the legislative authority, were mutually taken for granted, and, upon this basis, it was insisted, by way of objection—that there were not adequate guards for the safe exercise of so vast a power; that there ought to have been reservations of certain rights, a *better* disposition of the power to impeach, and a participation, general or special, of the house of representatives in the making of treaties.

The reply to these objections, acknowledging the delicacy and magnitude of the power, was directed to show that its organization was a proper one, and that it was sufficiently guarded.*

* The Federalist No. XLII. has these passages, “the power to make treaties and to receive and send ambassadors, speak their own propriety—Both of them are comprised in the articles of confederation, *with the difference only* that the former is *disembarrassed* by the plan of the convention, of an exception by which treaties might be substantially frustrated by regulations of the states.” This plainly alludes to the *proviso* which has been cited and commented upon. “It is true that when treaties of commerce stipulate for the appointment of articles, the admission of foreign consuls may fall within the power of making commercial treaties.” And in number LXIV. are these passages, “the power of making treaties is an important one, especially *as it relates to war, peace and commerce*; and it should not be delegated but in such a mode and with such precautions as will afford the *bigbest security*, that it will be exercised by men the best qualified for the purpose, and in the manner most conducive to the public good.” There are few who will not admit, that the affairs of *trade and navigation* should be regulated by a system cautiously formed and steadily pursued, and that both our treaties and our laws should correspond with, and be made to promote it.” “Some are displeased with it (that is, the power of treaty) not on account of any errors or defects in it, but because, as the treaties, when made are, to have the force of laws, they should be made only by men invested with legislative authority;” “others, though content that treaties should be made in the mode proposed, are averse to their being the *supreme law of the land*.”

It is generally understood that two persons were concerned in the writings of these papers, who, from having been members of the convention, had a good opportunity of knowing its views—and were under no temptation at that time, in this particular, to misrepresent them.

In the *address* and reasons of dissent of the minority of the convention of Pennsylvania to their constituents, “they state, that they had suggested the following proposition, among others, for an *amendment* to the constitution, “That

The manner of exercising a similar power under the *confederation* shall now be examined.

To judge of the similarity of the power, it will be useful to quote the terms in which it was granted. They are these, "The United States in congress assembled, shall have the sole and exclusive right and power of *entering into treaties and alliances*, provided that no treaty of commerce shall be made, whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subject to, or from prohibiting the importation or exportation of any species of commodities whatsoever." (Article IX.)

It will not be disputed that the words "treaties and alliances" are of equivalent import, and of no greater force than the single word "treaties." An alliance is only a species of treaty, a particular of a general;—and the power of "entering into treaties," which terms confer the authority under which the former government acted, will not be pretended to be stronger than the power "to make treaties," which are the terms constituting the authority under which the present government acts; it follows, that the power, respecting treaties, under the former, and that under the present government, are similar.

But though similar, that under the present government is more comprehensive; for it is divested of the restriction in the provision cited above, and is fortified by the express declaration, that its acts shall be valid notwithstanding the constitution or

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no treaty which shall be directly opposed to the existing laws of the United States in congress assembled, shall be valid *until* such laws shall be repealed or made conformable to such treaty." This shows that it was understood that the power of treaty in the constitution extended to abrogating even pre-existing laws of the United States, which was thought exceptionable; while no objection was made to the idea of its controuling future exercises of the legislative power—The same address states, in another place, that the president and senate "may form treaties with foreign nations, that may controul and abrogate the constitution and laws of the several states."

In the 2d volume of the debates of the convention of Virginia, which is the only part I possess—there are many passages that show the great extent of the power of treaty in the opinion of the speakers on both sides—As quotation would be tedious, I will content myself with referring to the papers where they will be found (viz) 91, 99, 131, 137, 143, 147, 150. 186. It will, in particular, appear, that while the opposers of the constitution denied the power of the house of representatives to break in upon, or controul the power of treaties, the friends of the constitution did not affirm the contrary, but merely contended, that the house of representatives might check by its *influence* the president and senate—on the subject of treaties.

laws of any state.—This is evidence, (as was the fact) of a disposition in the convention to disembarrass and reinforce the power of treaty. It ought not to pass unnoticed, that an important argument results from the *proviso*, which accompanies the power granted by the confederation, as to the natural extent of this power. The declaration that no treaty of commerce shall be made restraining the legislative power of a state from imposing such duties and imposts on foreigners as their own people are subject to, or from prohibiting the importation or exportation of any species of commodities whatsoever is an admission, 1. That the general power of entering into treaties, included that of making treaties of commerce, and 2. That without the limitation in the proviso, a treaty of commerce might have been made which would restrain the legislative authority of the state in the points interdicted by that proviso.

Let it not be said, that the proviso, by implication, granted the power to make treaties of commerce, under which congress afterwards acted; for besides that this is inconsistent with the more obvious meaning of the clause, the first article of the confederation leaves to the states individually every power not *expressly* delegated to the United States in congress assembled. The power of congress, therefore, to make a treaty of commerce and every other treaty they did make—must be vindicated on the ground that the express grant of power to enter into treaties and alliances is a general, which necessarily included as *particulars* the various treaties they have made, and the various stipulations of those treaties.

Under this power, thus granted and defined, the alliance with France was contracted: guaranteeing, in the case of a defensive war, her West India possessions, and when the *casus foederis* occurs, obliging the United States to make war for the defence of those possessions, and consequently, to incur the expenses of war.

Under the same power, treaties of commerce were made with France, the Netherlands, Sweden, and Prussia—Besides that every treaty of commerce is necessarily a *regulation* of commerce between the parties, it has been shown in the antecedent comparison of those treaties,* with that lately negotiated, that they produce the specific effects of restraining the legislative power from imposing higher or other duties on the articles of those nations than on the like articles of other nations, and

* Articles 2d, 3d, and 4th of treaty with France, 2d, 3d, and 20th of treaty with Russia, 2d, and 3d of treaty with Holland, 3d and 4th of treaty with Sweden.

from extending prohibitions to them which shall not equally extend to other nations the most favored; and thus abridge the exercise of the legislative power to tax, and the exercise of the legislative power to regulate trade.

These treaties likewise define and establish the same case of piracy, which is defined in the treaty with Great Britain. Moreover, the treaty with France, as has been elsewhere shown, with regard to the rights of property *naturalizes the whole French nation.*

The consular convention with France, negotiated, likewise, under the same power, grants to the consuls of that country, various authorities and jurisdictions, some of a *judicial nature*, which are actual transfers to them of portions of the internal jurisdiction and ordinary judiciary power of the country; the exercise of which our government is bound to aid with its whole strength. It also grants exemptions to French consuls from certain kinds of taxes, and to them, and French citizens, from all personal service; all which are extremely delicate interferences with our internal policy and ordinary jurisdiction.

Under the same power, the treaty with Morocco was formed, which, besides various other regulations relative to war, and several relative to trade, contains the rule, that neither party shall make war without a previous demand of reparation; in restraint of the general discretionary power of congress to declare war.

Under the same power, the treaty of peace with Great Britain was made—This treaty contains the establishment of a boundary line between the parties, which, in part, is arbitrary, and could not have been predicated upon precise antecedent right. It also prohibits the future confiscation of the property of adherents to Great Britain: declares that no person shall, on account of the part he took in the war, suffer any future loss or damage in his person, liberty, or property, and provides for the release of such persons from confinement, and the discontinuance of prosecutions against them.

It is difficult to conceive a higher act of controul, both of the legislative and judiciary authority, than by this article. These provisions are analogous in principle, to those stipulations which, in the second and ninth articles of the treaty under examination, have given occasion to constitutional objection.

Under the same power, various treaties with Indians, inhabiting the territory of the United States, have been made; establishing arbitrary lines of boundary with them: which determine the right of soil on the one side and on the other. Some of these treaties proceed on the principle of the United States

having conquered the Indian country, and profess to make gratuitous concessions to them of the lands which are left to their occupation. There is also a feature of importance common to these treaties, which is the withdrawing of the protection of the United States from those of their citizens, who intrude on Indian laws, leaving them to be punished at the pleasure of the Indians.

Hence it appears, that, except as to the stipulations for appointing commissioners, the treaties made under the confederation, contain all the features, identically or by analogy, which create constitutional objections to the treaty before us: They restrain, in certain instances, the legislative power to lay taxes; they make numerous and important regulations of trade; they confer the benefit of naturalization as to property; they define cases of piracy; they create causes of expenditure; they direct and modify the power of war; they erect, *within the country*, tribunals unknown to our constitutions and laws, in cases to which these are competent—whereas the treaty with Great Britain only provides for the appointment of *arbitrators* in cases to which our tribunals and laws are incompetent; and they make dispositions concerning the territory and property of the United States.

It is true, that some of the treaties made under the former government, though subsequent to the proposing of the articles of confederation to the states, were prior to the final adoption of these articles; but still it is presumable that the treaties were negotiated with an eye to the powers of the *pending* national compact. Those with Great Britain, Sweden, Russia, and Morocco, and the convention with France, were posterior to the completion of that compact.

It may, perhaps, be argued, that a more extensive construction of the power of treaty, in the confederation, than in our present constitution, was countenanced by the union in the same body of legislative powers with the power of treaty. But this argument can have no force, when it is considered that the principal legislative powers with regard to the objects embraced by the treaties of congress, were not vested in that body, but remained with the individual states—Such are the power of *specific* taxation, the power of regulating trade, the power of naturalization, &c.

If in theory the objects of legislative power are excepted out of the power of treaty, this must have been equally, at least, the case with the legislative powers of the state governments as with those of the United States—Indeed the argument was much stronger for the objection, where distinct go-

vernments were the depository of the legislative power, than where the same government was the depository of that power and of the power of treaty.—Nothing but the intrinsic force of the power of treaty could have enabled it to penetrate the separate spheres of the state governments. The practice under the confederation for so many years, acquiesced in by all the states, is, therefore, a conclusive illustration of the power of treaty, and an irresistible refutation of the novel and preposterous doctrine, which impeaches the constitutionality of that lately negotiated—If the natural import of the terms used in the constitution were less clear and decisive than they are, that practice is a commentary upon them, and fixes their sense. For the sense in which certain terms were practised upon in a prior constitution of government, must be presumed to have been intended, in using the like terms in a subsequent constitution of government for the same nation.

Accordingly, the practice under the present government before the late treaty, has corresponded with that sense.

Our treaties with several Indian nations regulate and change the boundaries between them and the United States—And in addition to compensations in gross, they stipulate the payment of certain specific and perpetual annuities. Thus a treaty in August, 1790, with the Creeks (article 5) promises them the yearly sum of one thousand five hundred dollars—And similar features are found in subsequent treaties with the Six Nations, the Cherokees, and the North Western Indians—This last has *just* been ratified by the *unanimous voice* of the senate. It stipulates an annuity of 9500 dollars—and relinquishes to the Indians, a large tract of land which they had, by preceding treaties, ceded to the United States.

Hence we find that our former treaties under the present government, as well as one subsequent to that under consideration, contradict the doctrine set up against its constitutionality—in the important particulars of making dispositions concerning the territory and property of the United States, and binding them to raise and pay money. These treaties have not only been made by the president, and ratified by the senate, without any impeachment of their constitutionality, but the house of representatives has heretofore concurred, and without objection, in carrying them into effect, by the requisite appropriation of money.

The consular convention with France stands in a peculiar predicament. It was negotiated under the former government, and ratified under the present; and so may be regarded as a treaty of both governments, illustrative of the extent of the power of treaty in both. The delicate and even the extraordi-

nary nature of the provisions it contains, have been adverted to. Though all reflecting men have thought ill of the propriety of some of them, as inconveniently breaking in upon our interior administration, legislative, executive, and judiciary; only acquiescing in them from the difficulty of getting rid of stipulations entered into by our public agents under competent powers, yet no question has been heard about their constitutionality. And congress have, by law, assisted their execution by making our judicial tribunals, and the public force of the country, auxiliary to the decrees of the foreign tribunals which they authorize within our territory.

If it should be said, that our constitution, by making all former treaties and engagements as obligatory upon the United States, under that constitution, as they were under the confederation, rendered the ratification of the convention a matter of necessity—the answer is, that either the engagements, which it contracted, were already conclusive, or they were not—if the former, there was no need of a ratification; if the latter, there was no absolute obligation to it. And, in every supposition, a ratification, by the president, with the consent of the senate, could have been predicated only upon the power given in the present constitution in relation to treaties; and to have any validity, must have been within the limit of that power.

But it has been heretofore seen that the inference from this instrument is no less strong, if referred to the power under the confederation, than if referred to the power under the present constitution.

How happens it, that all these invasions of the constitution, if they were such, were never discovered, and that all the departments of the government, and all parties in the public councils should have co-operated in giving them a sanction? Does it not prove that all were convinced, that the power of treaty, applied in our exterior relations to objects, which, in the ordinary course of internal administration and in reference to ourselves, were of the cognizance of the legislative power? and particularly that the former was competent to bind the latter in the delicate points of raising and appropriating money? If competent to this, what legislative power can be more sacred, more out of its reach?

Let me now ask (and a very solemn question it is, especially for those who are bound by oath to support the constitution) Has it not been demonstrated that the provisions in the treaty are justified by the true and manifest interpretation of the constitution—are sanctioned by the practice upon a similar power under the confederation, and by the practice in other instances under the present government?

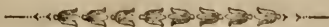
If this has been demonstrated, what shall we think of the candor and sincerity of the objections which have been erected on the basis of a contrary supposition? Do they not unequivocally prove, that the adversaries of the treaty have been resolved to discredit it by every artifice they could invent? that they have not had truth for their guide, and consequently are very unfit guides for the public opinion, very unsafe guardians of the public welfare?

It is really painful and disgusting to observe sophisms so miserable as those which question the constitutionality of the treaty, retailed to an enlightened people, and insisted upon with so much seeming fervency and earnestness—It is impossible not to bestow on sensible men, who act this part, the imputation of hypocrisy—The absurdity of the doctrine is too glaring to permit even charity itself to suppose it sincere—If it were possible to imagine that a majority in any branch of our government, could betray the constitution, and trifle with the nation, so far as to adopt and act upon such a doctrine—it would be time to despair of the republic.

There would be no security at home, no respectability abroad. Our constitutional charter would become a dead letter. The organ of our government for foreign affairs would be treated with derision whenever he should hereafter talk of negotiation or treaty. May the great Ruler of nations avert from our country so grievous a calamity!*

CAMILLUS.

* It is very probable, that a treaty with Algiers is now on its way to the United States, which may be expected to contain similar stipulations with that with Morocco—This treaty, which will have cost the United States no trifling sum, and will be of very great value to our trade, must equally fall, on the doctrine which I oppose.



To the Editor of the American Remembrancer.

THE following Remarks on the treaty lately concluded between the United States and Great Britain, were written very soon after that instrument was made known to the public, and before the ratification of it, by the president of the United States, took effect. The writer had not seen any of the voluminous productions in defence of the treaty, which have appeared, in the different gazettes of the United States, under the signatures of Camillus, Curtius, A Citizen, &c. &c. And even had he seen them, he would not have thought it necessary, or incumbent on him, to answer or detect all the sophistry and fallacious arguments and statements they contain. In the course of this investigation, he hath candidly endeavoured to weigh the real merits of, and objections to, the treaty, with the impartiality of a person actuated neither by party zeal, nor any worse motive, but by a steadfast attachment to the United States alone, the principles of the revolution, and the prosperity of the government.

R E M A R K S

ON THE

Treaty of Amity, Navigation, and Commerce,
*Concluded between Lord Grenville and Mr. Jay, on the Part of
 Great Britain and the United States, respectively.*

BY A CITIZEN OF THE UNITED STATES.

Sic vos non vobis.—Virgil.

Not for yourselves, ye merchants, shall ye toil,
 Not for yourselves, ye farmers, plough the soil,
 Not for yourselves, ye soldiers, laurels gain,
 Not for yourselves, ye sailors, brave the main.—*Anonymous.*

“ By presenting many propositions at once, which are to be *voted for in the lump*, they hide what is destined to promote their own private views, or give a colour to it by *joining it with things* which they know will *take hold of the mind of the people.*”

De Lolme on the British Constitution.

THE treaty of amity, commerce, and navigation, lately concluded in London between Lord Grenville and Mr. Jay, on the part of the king of Great Britain and the United States, respectively, is one of the most important subjects ever agitated in America since she became an independent nation; it seems, indeed, to have engrossed the public mind more than any other, the adoption of the federal constitution, only excepted.—Reason, prejudice, and passion, equally prompt to the discussion of it, and every individual enlists himself under the banners of one or the other. This renders a temperate enquiry into its merits, without regard, either to the original framers, or its subsequent advocates or enemies, an object of the first importance. I shall, therefore, leave it to others to discuss, whether the late envoy extraordinary entered upon, and concluded it, in pursuance of *general or particular instructions*, either from the president of the United States *alone*, or *by and with the advice and consent of the senate*; or whether, he pursued the dictates of *his own better judgment*, without any authority whatsoever. If, however, there should appear any thing in the treaty to condemn, *decency*, and *established precedent*, will require, that it should be considered as the *act of the minister, only*; more especially as the sanction of the supreme executive magistrate of the United States has been hitherto withheld, as we have every reason to believe.

But, before entering into a discussion of the articles of the treaty, it may not be improper to advert, not only to existing circumstances at the time it was concluded, but to some antecedent events, which may be presumed to have had some operation upon the minds of the nations, whose mutual friendship is, by this instrument, proposed to be conciliated, and perpetually cemented. For a treaty (so far as relates to a free republic at least) ought to be considered as the act of the nation, and not merely of the government, only; or, in other words, of the parties who conclude, sign, and ratify them. To this end, due attention should be paid to the prevailing sentiment of the nation, so as to remove every obstacle to that cordiality, and unfeigned friendship, which treaties of amity are intended to promote.

It is just twenty years since the United States of America, stimulated by the tyrannical usurpations of the present king of Great Britain, declared the good people of these states absolved from their allegiance to that prince, and that all political connexion with Great Britain ought to be totally dissolved. A cruel civil war was waged against them during a period of eight years, the calamities of which were heightened by every wanton act of depredation, oppression, and insult, that rapacity, cruelty, and a vindictive spirit could prompt men to commit. Our slaves were excited to rebel against us; the savages on our frontiers were basely stimulated to add, to the sanguinary measures of the British enemy, their own more inhuman mode of warfare. Our towns were wantonly consumed to ashes, and our country every where laid waste. Our property was seized for the use of the armies of our enemies; or destroyed, without compensation, and without compunction or restraint: Thousands of our negroes, the cultivators of the soil in the southern states (and forming the greater part of the moveable property of their masters) were enticed or forced away from their service—Eighty thousand of our fellow citizens are supposed to have fallen victims to the offended majesty of that vindictive monarch, whose name was more execrated among us, than ever Nero's was at Rome. Inability to prosecute the war longer, produced a peace; but it was peace without forgiveness, without friendship, and without sincerity. During the long course of hostilities, every sentiment of regard and of mutual confidence had been extinguished on the part of both nations, and the peace concluded between them, was rather calculated to perpetuate, than to extinguish the remembrance of their mutual animosity. The citizens of the middle and southern states complained that their particular interests had

been overlooked, or sacrificed, by some of the articles of the treaty. The northern states found their trade abridged, by the very instrument which they supposed would have secured its unlimited extension. Thus even the treaty of peace had no other recommendation, in the eyes of the people of America, than the termination of hostility. His Britannic majesty, on the other hand, appears not to have entered into it with good faith. The western posts, which were to have been delivered up "with all convenient speed," were forcibly detained in the possession of his troops; and the negroes and other property taken from the people of America, were, in direct violation of the treaty, carried away without compensation. An equal disposition to evade, or violate some of the articles of the treaty was attributed to several of the states, and mutual complaints and recriminations took place between the two nations. The restraints imposed upon our West India commerce by his Britannic majesty; his *supposed* ill offices towards us, in exciting the depredations of the Barbary states upon our commerce; and in fomenting discontents among the Indian nations, and even stimulating and aiding them in acts of hostility against us, occasioned those wounds to inflame and fester anew, which had been, at best, imperfectly cicatrised.

The aversion of his Britannic majesty to enter into any commercial treaty with the United States, had manifested itself, in the rejection of all overtures made for that purpose by the present vice-president of the United States, who was sent thither to effect such a negociation, not long after the conclusion of the peace.—The adoption of the federal constitution removed all those obstacles, which, it was pretended, prevented the court of Great Britain from entering into negotiations with us. It did more.—It removed every barrier to the full and complete execution of the treaty of peace, on the part of the United States, by rendering that treaty a part of the supreme law of the land: the federal courts, in their decisions, manifested the most unequivocal disposition to give to the treaty the most *favorable* construction on behalf of British creditors.—It was the expectation of all, that the energy of the federal government would not fail to extort from his Britannic majesty an equal compliance with the treaty on his part.

The constitution, at the time of its adoption, was regarded as the guarantee of a free trade with the West Indies, and with every other part of the world; it soon became matter of wonder and of dissatisfaction, that it had not produced these effects. It was finally made known that the executive of the United States had taken measures to discover the sentiments of

the British court on the subject of a treaty of commerce, and that the proposition still continued to be treated with disrespect.—In the mean time, France was engaged in a revolution, the principles of which were supposed to bear so great an analogy to our own, that every American felt himself interested in her success.—Our prayers were continually offered up in her behalf, and it was concluded that the cords of amity would be drawn as closely as possible between the two republics.—His Britannic majesty was not long in joining the alliance formed among the enemies of the new republic. America soon found herself made a party in the war, *by her sufferings*: the spoliations on our commerce are well known; they have been felt through every part of the United States. Not only our vessels with their cargoes were seized and confiscated, because engaged in commerce with the enemies of his Britannic majesty; but our citizens were abused in their persons, imprisoned or impressed into the service of a sovereign whom they detested, under pretext that they were his subjects. Innumerable acts of piracy were committed by a swarm of privateers which infested our coasts; nor was the insolence practised by his Britannic majesty's sea officers inferior to the depredations of the privateers. Stimulated by resentment, and a desire of retaliation, some of the citizens of America took commissions from, or entered into the service of, their sister republic. They were prosecuted for exercising a natural right, not repugnant to any treaty, or known law of the land. These prosecutions were, by the sufferers and their friends, considered as an act of supererogation in our government, founded on a partiality to British interest, in opposition to that of France. Every act of concession or conciliation on the part of the United States, seemed to give new life and vigour to the arrogance, insolence, and depredations of the British ships of war and cruisers. The Indians, whose hostile disposition towards us was supposed to be the effect of British perfidy, prosecuted the war against us in a stile altogether new, and gave reason to presume that they were not only aided with arms, ammunition, and warlike stores, by the British government, but that they were actually assisted by the officers and militia, if not by the regular troops of that nation. CONGRESS, to whom it belongs to decide upon a *just cause of war*, and to *regulate commerce*, roused by so many reiterated acts of aggression, had resolved upon some cautionary measures to secure indemnification for injury, and to retaliate upon a nation from whom so many vexations were daily received. The representatives of the people concurred in the measures proposed, by a great majority—the senate were divided—

the vice-president held *the balance* in his hand, and the scale preponderated against the representatives of the people. At this moment of effervescence in the public mind, the late envoy extraordinary was appointed; the object of his mission was supposed to be a demand of reparation of injuries, and a compliance with the terms of the violated treaty of peace.

From this short recapitulation of preceding events, it will appear, that the public mind was by no means prepared to enter, with cordiality, into a state of amity with a nation whose government had, for twenty years, incessantly persecuted the United States, either by open acts of hostility, or the insidious arts of secret animosity. It was, therefore, reasonably expected, that a treaty, whose object was to bind the two nations in amity with each other, would contain within it every thing necessary to soften asperity—to subdue resentment—to satisfy claims, and to conciliate affection. To determine how far this expectation has been fulfilled by the present treaty, it will be necessary, not only to state what it *contains*, but also, what it does *not contain*. I shall begin with the former; and, in order to do it with the more regularity, I shall take it article by article.

The preamble states the motives to the treaty to be, the desire “of terminating the differences between his Britannic majesty and the United States, in such a manner, as, *without reference to the merits of their respective complaints and pretensions*, may be best calculated to produce mutual satisfaction and good understanding.” Such a preamble would either lead us to expect the most *liberal concessions* in favor of the United States, or a *total dereliction* of their complaints by the envoy extraordinary. On the part of his Britannic majesty such a waiver might be considered, if not a mark of great magnanimity, at least, of great condescension, whilst his ships of war and privateers were in the full career of plunder on the commerce of our unresisting citizens. Nor can it be altogether denied, that his majesty, as well as the United States, had some cause to murmur at the events of his reign:—He had lost an immense territory, which he had regarded as his hereditary right, *jure divino*, and had spent above an hundred millions sterling of his subjects’ money in the attempt to retain it in subjection to him. He might be compared to an unlucky sportsman whose over-charged gun had burst, burnt his fingers, given him a sound douse in the chaps, and knock’d out half a dozen of his teeth, in attempting to shoot a partridge;—and America to the poor bird itself, which had got a grievous wound, in spite of the unskillfulness of the awkward

marksman. Considering, however, the presumable object of the mission of the envoy extraordinary, it appears somewhat unaccountable upon what grounds he could suppose himself authorized to relinquish the discussion of the complaints of the United States, unless indeed he apprehended that his Britannic majesty's choler might be so far roused by it, as again to reject a negociation, and compel him to return to America *re infecta*;* or, perhaps, he was sensible, that in the adjustment of such a *variety of claims as America was entitled to insist on*, the business might be so far procrastinated as to lessen the glory of the achievement; or, perhaps, *retard* his return to his native country, in time to accept that *accumulation of honor* which there awaited him. But let us now proceed to examine the treaty, some of the articles of which I shall pass over without observation, as being either of little moment, or customary in similar treaties; whilst upon some others I may wish to detain the reader's attention.

I. Of eight and twenty articles which the treaty contains, the first ten are declared to be *permanent*; the remainder are of limited duration. The first stipulates, in the ordinary form, that there shall be peace, "and true and sincere friendship between his Britannic majesty and his successors, and the United States, and between the people, respectively, without exception of persons or places."—To render this article effectual, it will be necessary that the subsequent articles should contain *all such things as* "are calculated to produce mutual satisfaction and good understanding between the nations:" otherwise, this article will ever remain in the same state of *inexecution*, as those relating to the *negroes* and the *western posts*, in the treaty of peace.

II. The second article stipulates that his Britannic majesty *will* withdraw all his troops and garrisons from all posts and places within the United States, on or before the first day of June, 1796. This, by the treaty of peace, ought to have been done, *at least, a dozen years ago*; and it appears somewhat strange that the immediate performance of it was not made a condition, precedent to any further negociation, except for reparation for the spoliation on our commerce, &c. for how can we be assured that his Britannic majesty *will* observe more good faith in the performance of this treaty, than the former, if an excuse can be found to evade it? The only difference

* Whilst the treaty was in discussion before the senate, a certain gentleman, high in office, who was once ambassador at the British court, was heard to declare, that *he* could have procured a *better* treaty, but declined doing so, because he thought it not sufficiently advantageous to America.

that this part of the second article makes between our present and former situation is, that the detention of the posts, *hitherto*, is evidently *sanctioned* by the present treaty; and all *compensation* for former breaches of faith, and aggressions in this respect, most *generously waved*, on the part of the United States; it must be confessed, however, that this article furnishes an interpretation of the words "*with all convenient speed*," in the former treaty; which, in all future negotiations, with his Britannic majesty, may be understood to mean *a dozen years*.

The same article provides that the settlers and traders, within the precincts or jurisdiction of the western posts, may *continue to reside there, without being compelled to become citizens of the United States, or to take any oaths of allegiance to the government thereof*, or remove and dispose of their lands and other property, at their election. This, as it respects traders, and other *transient* persons, is just and proper: as it relates to *land-holders* it will be made the subject of future remark, when we examine the ninth article.

III. The third article contains a variety of stipulations, some of which appear to be reciprocally liberal, whilst others manifest a spirit of accommodation and concession, on the part of the United States, which very few are likely to feel, in any degree, equal to the envoy extraordinary.—If it be true that the most important stations for carrying on the fur trade, &c. are within the territories of the United States, which, I am told, is the case, Great Britain will be no small gainer by that equal intercourse, which this article permits upon the lakes and the waters thereof, as also the free use of the Mississippi,* and the portage places in the territories of the United States and Great Britain, respectively. But the *total exclusion of American vessels* from the sea-ports, harbours, creeks, and rivers of the British American territories on the Atlantic, gives to this article a very disadvantageous turn for the commercial interests of the United States; thereby securing to the British nation a *decided and perpetual pre-eminence* over them in the trade with the north-western parts of the American republic; since all articles for exportation to foreign parts, must either go down the St. Lawrence and be exported to *Britain*, in *British* ships, or be *brought over land* to the head waters of Hudson's river, or some other less convenient communication with the Atlantic ports of the United States.—Foreign goods must be transported

* It may, with no small propriety, be asked, on what part of the eastern side of the Mississippi his Britannic majesty possesses any territory? I know of none; and it might, perhaps, puzzle the envoy extraordinary himself to point it out.

to the western territories in like manner. The communication from the lakes to Quebec, by the river St. Lawrence, is so much easier than to New York, by the river Hudson,* and the advantages (if I am rightly informed) in every respect so much greater, as to preclude all competition on the part of the United States. Hence it seems probable that Great Britain will continue to monopolize the trade on the lakes, and finally, the whole trade of the American north western territory. Other causes than those already mentioned will contribute to promote this. *British traders* are already settled at the *most advantageous stations* for carrying on commerce, and probably have possessed themselves of *all the land* at those places, which the preceding article secures to them *for ever*. An American going there to settle would find himself under all the disadvantages of attempting to establish himself in a foreign country, and exposed to all the ill offices which jealousy could suggest.

I shall not here enquire how far the United States had a right to insist on the free navigation of the river St. Lawrence, at least for their vessels bound from one part of the United States to another, reserving that question for another place; but it is observable, that while our vessels are totally excluded from the Atlantic ports of Canada, &c. the vessels of those countries may freely navigate our rivers † as far as the highest ports of entry for foreign ships, in any part of the United States. This want of reciprocity will be excused by the advocates for the treaty, by a general reference to colonial laws; to which I shall offer an answer in its proper place.

Commercial regulations, not founded in experience, can never be adopted with too much caution. They ought never to find a place in a perpetual treaty; for whatever inconvenience or disadvantage result from them, it cannot be removed without hazarding a war; since it can never be expected that a commercial nation, tenacious of her interests, will ever resign an advantage that is once secured by a perpetual treaty. Such a nation is the British.

* Nothing appears more questionable than that policy, which lays open the navigation of our rivers to those maritime powers with whom we may be eventually engaged in war. Experience *might* have taught us this truth in the course of our war with Great Britain.

† The writer, for want of a correct map, and description of those parts of the United States, is unable to descend to such particulars as would illustrate this part of his subject.

IV. and V. As these articles relate altogether to an amicable adjustment of some doubts respecting our boundaries, I presume they are proper enough for that purpose.*

VI. The sixth article recites, that it is alleged, by divers of his majesty's subjects, that debts, *bona fide* contracted before the peace, still remain owing to them by the citizens of the United States, "and, that, by the operation of various lawful impediments since the peace," the recovery has been delayed, and the value and security of the debt lessened. It stipulates, therefore, for the appointment of a board of commissioners, part *British* and part *American*, to examine all complaints referred to them, "and to take into consideration all claims, whether of principal or interest, or balances of principal and interest, and to determine the same respectively, according to *equity* and justice;" they may also *examine all persons that may come before them*, and receive in evidence written depositions, books, or papers, or *copies* or *extracts* thereof, duly authenticated; and their award shall, in all cases, be *final and conclusive*, both as to the justice of the claim, and the amount to be paid to the creditor; which amount the United States undertake *to cause to be paid in specie*, on condition of such releases, or *assignments* to be made by the creditor, as the commissioners may direct.

I have been greatly at a loss to suppose a case to which this article can apply; at length, however, I think I have stumbled upon two, perhaps a third—but I am not presumptuous enough to insist that I am right in either. The first, I have supposed to be the case of a debt confiscated or sequestered during the war, where the debtor has pleaded such confiscation or sequestration in bar of the plaintiff's claim. When this question was discussed in the federal court of Virginia, the chief justice of the United States gave it as his opinion, that the treaty of peace *annulled* all the acts of sequestration passed by the several states, *though, at that time sovereign and independent, and avoided all acts done in pursuance thereof*.† A majority of the court were of a *different* opinion. Whether it was the intention of the envoy extraordinary to restore to the opinion of the chief justice that weight, which it had lost on the occasion alluded to, I will not pretend to decide; but if my conjecture be just, the British claimant

* See this subject properly discussed, in the *American Remembrancer*, vol. II. page 116.

† The political morality of the states was highly impeached for their conduct in confiscating and sequestering British property, debts, &c. It seems at this day forgotten, that on the 27th of November, 1777, congress *earnestly recommended* that measure to the several states, as appears by their *journals* of that date.

malgre the decision of a constitutional court of judicature may now rest secure of his claim, without any abatement. The second case applicable to this article, I presume, will arise from the operation of an act of the legislature of Virginia, passed in the year 1787, repealing all acts of assembly which prohibited the recovery of British debts, with a suspending clause, *until the British posts in the United States should be delivered up*, and measures taken for the *further fulfilment* of the treaty, by *delivering up the negroes* of the citizens of that state, *taken away contrary to the seventh article of the treaty of peace*. How far this legal impediment might operate to delay the debt of a British creditor, or to lessen its value, or security, I cannot presume to say; yet I should conclude that the adoption of the federal constitution a few months after, did very effectually remove this legal impediment. The third case, I am inclined, from the special wording of this article, to suppose, refers to those cases where suits have been brought, and a verdict been given for the defendant; or the principal debt *recovered* either without interest (if any such case has happened) or with a *deduction of interest during the war*. In these latter cases, the chief justice of the United States had instructed the jury to give interest without any deduction. They uniformly disregarded the instruction; it was necessary to provide some remedy in this, as well as in the first mentioned case, and it is probable that the opinion of the chief justice of the United States will be paid due respect to, by the commissioners to be appointed in virtue of this article. The liberality of the envoy extraordinary in this article, evinces, at the same time, the most scrupulous regard to the punctual adherence to the spirit of treaties, on the part of the United States, and his extreme politeness and generosity in passing over in silence those causes, which gave rise to the *legal impediments* thus happily removed. Nothing renders a treaty more respectable than such exalted instances of magnanimity in the framers of it.*

VOL. III.

R r

* Since this pamphlet was transcribed for the press, I have had an opportunity of conversing with an intelligent and well-informed gentleman, who has suggested that an *additional*, and even the *principal* object of the sixth article, probably is, to enable *British creditors* to obtain compensation from the government of the United States, for the *depreciation of money actually received by themselves or their agents, during the war*; which payments, according to the *general laws* of the land, as well between citizens as others, were to be rated according to the nominal amount, without any regard to the actual depreciation of money at the time of payment. And further, to *revive and establish all claims* on the part of *British subjects*, against citizens of the United States, at the commencement of the *revolution war*, the recovery of which was suspended, during the continuance of the

It has been hinted that this court of commissioners (a part of whom, as was before observed, are to be *British*) who are thus to liquidate legal claims by one individual against another, is an encroachment upon the functions of the federal judiciary, and a violation of the constitution. The question is delicate and important; there is, moreover, an obscurity in this article, which makes it difficult to ascertain its real import. It may not be improper to notice some parts of it, with a view to the discussion of this question.—1st, The award of the commissioners shall be *final* in all cases, *both as to the justice of the claim*, and the amount to be paid the creditor. 2d, The United States undertake to *cause* the sum awarded to be paid, &c. on condition of such *releases* or *assignments* to be given by the creditor, as the commissioners may direct—Is it meant that the award shall be final and conclusive between the *creditor*, and the original debtor? If so, he must be made a *party defendant*, and that, I presume, by regular *process*: he must be heard in his defence; he ought to have *compulsory process* to procure the attendance of *witnesses*; the truth of the *facts put in issue are to be tried and determined* by the commissioners. IT BELONGS TO THE CONSTITUTIONAL COURTS TO DO ALL THESE THINGS; and

war, by the creditors themselves, being then considered or declared alien enemies, and, as such, incapable of suing in our courts. This *legal impediment* having lessened the value, or diminished the security of their debts, they now claim an indemnification, for the same, against the United States. If these conjectures be well-founded, and I see no reason to doubt them, how much better was it to have been a *TORY*, at that time, than a *WHIG*!!! How many American *WHIGS* lost their *debts*, nay, their *whole estates*, by the operation of those very laws, which eventually will have secured the debts of their enemies! This article, it is supposed, was made a precedent condition to the admission of the *seventh*, relating to compensation to be made for spoiliations upon our commerce, to which this *counterpoise* was *previously* secured.—When we recollect that nine-tenths of these last-mentioned claims, on the part of *British* creditors, rest upon no other evidence than old mercantile ledgers and journals, often *most inaccurately*, and *not always most fairly* kept; that the commissioners are *not* bound to proceed upon *legal testimony* or *evidence, only*, but according to *circumstances*; that they may receive *copies* or *extracts*, even of *books* and *papers*, without producing either the *original* or a *full copy*; that the *debtor*, in these cases (unless he be made a *party defendant*, 'as in case of a suit') will not appear (even if called upon, and, in most instances, cannot be found) to contest the justice of the claim; and that there is an equal chance that a *majority* of these commissioners will be *British*; there can be little reason to doubt that the operation of this article will be *fully adequate to countervail* (if I may be permitted to borrow a diplomatic phrase from another part of the treaty) 'all the advantages which we are flattered with the hopes of, from the *seventh* article. Add to this, that every conjecture, respecting the *intended* operation and effect of this article, authorises the conclusion, that this *court of commissioners* is to be *paramount* to the *constitutional courts*, both of the several states, and of the federal government; that it may examine *matters of fact* without the aid of a jury; and may *re-examine matters of fact* tried by a jury, *contrary* to the rules of the *common law*, and *contrary* to the *twelfth* article of the ratified amendments to the constitution.

the *trial of matters of fact* put in issue must there be by a JURY. Again, the United States undertake to *cause* the money awarded to be paid. How? By process of execution against the defendant's body or estate? Or, out of the treasury of the United States, trusting for reimbursement to the assignment from the creditor? How are they to recover in virtue of this assignment? By harrassing the debtor with a new suit, or is he bound to all intents and purposes by the award of the Commissioners? These things are difficult to be understood, and still more difficult to reconcile to that clause of the constitution, which declares that the judiciary power of the United States shall be *vested in one supreme court*, and such inferior courts as *congress* may, from time to time, *establish*; that the *judges* shall hold their offices *during good behaviour*; that they shall take an oath to support the constitution of the United States; and that the jurisdiction of these courts shall extend to *all cases in law and equity* arising under the constitution, or laws of the United States, and *treaties made*, or *which shall be made* under their authority. The great tenderness of the envoy extraordinary for the case of British creditors, seems to have made him forget that he presided in one of those courts, whose jurisdiction extends to *all cases arising under treaties*; a circumstance which can only be attributed to his being so much engrossed by his *new office*, as not only to forget the *functions and duties of that which he had left behind*, but even the *constitution of his country*.

VII. The succeeding article relates to the compensation to be made to the citizens of the United States, for the spoliations and depredations committed on our commerce, and to the subjects of Great Britain for such captures as have been made within the jurisdiction of the United States, or by vessels armed therein. For this purpose a similar board of commissioners, with nearly similar powers, are to sit in LONDON, who are to decide the claims referred to them according to justice, equity, and the laws of nations; and the British government undertakes to pay the sum awarded to the claimants in specie, without deduction. But it would seem that the commissioners are not to take cognizance of any cases, but such wherein adequate compensation cannot be *now actually obtained in the ordinary courts of justice*; with a further exception of such cases, where the losses have been occasioned by the manifest delay, negligence, or wilful omission of the claimants.

Of all the injuries to which mankind are exposed, those committed on the *high seas* are most easily perpetrated, and most difficult to be prevented, or punished. The conduct of *privateersmen* differs in nothing from that of *pirates*, except in

the circumstance of obtaining a previous licence to exercise their nefarious practices. That of the commanders of ships of war but too often partakes more of the insolence of a *bashaw* than the courtesy of a soldier of honor. The spoliations committed on the property of the citizens of America by these two classes of men, must have been often attended with circumstances of inconvenience to the sufferers, far beyond the apparent amount of the injury offered. I have known a profitable voyage defeated, and the vessel finally lost, by being plundered of a few sail-needles, and twine, to the value of less than four dollars. The detention of an hour, or being turned out of her course for a day, may prove equally fatal to a merchant ship. These are injuries for which no reparation in damages, estimated merely according to the value of the thing taken, or the time of detention, can make adequate satisfaction; acts of depredation and violence committed by persons unknown, to whose residence we are strangers, or whose residence is at too great a distance to follow them in hopes of satisfaction, are frequently submitted to, from despair of obtaining any compensation. Thus it will happen that a thousand instances of oppression will remain unatoned for, from the nature of the injury itself, and the place where offered. The immense distance to which the claimants must repair, to prosecute their claims, whether by original action, by appeal, or by reference to this board of commissioners, will be found, in three cases out of four, an insurmountable obstacle to the full attainment of justice. Had the commissioners been appointed to sit in any part of the United States, or even in one of the West India islands, instead of *London*, the probability of reparation to the sufferers would have been much increased. Let the operation of this article be ever so favorable to the claimants, there must always remain a very considerable balance unsatisfied. The liberality of the United States in the case of captures made within their jurisdiction, &c. seems to have been more readily accepted, than copied by the British negotiator.

VIII. and IX. Article the eighth relating solely to the compensation to be made to the several boards of commissioners, I shall pass it over without observation. The ninth, however, deserves no small attention—It is thereby agreed, that British subjects and American citizens who *now* hold lands in America, and Great Britain, respectively, shall continue to hold the same, and may grant, sell, or devise the same to whom they will, in like manner as if they were natives; and that *neither they* nor their *heirs* or *assigns* shall be regarded as *aliens*, so far as may respect the said lands, and the legal remedies incident thereto.

According to the principles laid down in Calvin's case [Co. rep. part 7.] when two countries, which have been under allegiance to the same prince, separate, all those of either country *born before the separation* takes place, may hold, or inherit lands in that country from which they are thus separated. Upon this principle the treaty of peace secured to the owners of lands in America, being British subjects, all their possessions in lands *at that time held by them*. And the reasonable construction seemed to be, that they should have their whole lives to dispose of them, or to become American citizens; if they did neither, the lands would be liable to escheat at their death, for defect of heirs, unless some *ante-natus*, or some American citizen, could establish his claim thereto, either as heir, or devisee. For it was held, that the common law, which excludes aliens from inheriting; was not altered, or intended to be altered, by that article. And the reasons for that opinion were not without weight in the minds of those who maintained them; since they conceived that the principle of excluding aliens from holding lands was founded in sound policy; adopting herein one of the reasons of the common law of England, "*that the nation might in time be subject to foreign influence*."—In giving the most liberal construction to the treaty of peace, they did not apprehend it was meant to contravene a principle so long established among their ancestors, and so generally understood. As to acquisitions of lands, made by British subjects, in America, since the peace, the question, whether these are within the reason of the case of *ante-nati*, has not occurred: whenever it does, it is not impossible that a distinction may be taken between a title acquired by *descent* or *devise*, and one by *actual purchase*, since the *commune vinculum* has been broken. But the treaty now under discussion hath totally subverted the *wholesome maxims* of the *common law*, and of sound policy, both in the *second* and the *ninth* article, by virtue of which the subjects of Great Britain, though equally aliens as the subjects of China, may hold and transmit to their latest posterity, "*according to the nature and tenure of their respective estates and titles therein*," lands lying in the United States, "*and held by them at present*."—The second article very liberally grants to British subjects all their *usurped possessions* in lands within the *jurisdiction* of the *western posts*. How far this undefined term may extend, it is difficult to conjecture, whether one, five, or fifty miles.* The claim of *jurisdiction*, made by Governor Simcoe last summer, extended,

* The same gentleman to whom I am indebted for the hint contained in the note on article 6, informs me that the cession of territory to British subjects,

if I mistake not, a good way within the limits of *Vermont*, and not less than *twenty* miles from his nearest post. At this rate the cession of soil made to the subjects of Great Britain may be very extensive, and if they have been granted to hold by *fealty to the crown of Great Britain*, the ninth article confirms the tenure.* It does more; it exempts their lands from the operation of those laws which would *limit the duration of estates*, if such be the nature of their estates therein. It will be said that this article is reciprocal; nothing can be more fallacious: it is probable that the subjects of Great Britain at this day own *ten thousand times* as much land in America, as is owned by American citizens in England. Under the sanction of this article, though not within the strict wording of it, it is probable that the quantity of lands holden by British subjects in America will be ten times as great, in a few years, as at present, so that America will, in great measure, be tenanted by the *vassals* of *British landlords*.† The high price of lands in England will, probably, induce many land-holders there to exchange their property for more extensive estates in America; nor will there be wanting temptations to the monopolizers of that article to engross as large a portion of the *soil* as of the *funds* of the United States. What influence this may have over the body politic it is not hard to conjecture; especially if his *Britannic majesty* himself, who is reported to be a considerable stockholder in the *American funds*, should feel the same inclination to speculate in lands: he might, probably, in a few years engross so large a portion of them, as to revive his claim of supreme lord of the United States of America.

X. The tenth article stipulates that there shall be no sequestration or confiscation of debts, or property in the funds, or in public or private banks, in any event of war between the two nations.—One of the reasons upon which this article was probably founded, was slightly touched upon above—His *Britannic majesty*, it is said, either allured by the prospect of

comprehended in the second article, will probably amount to a grant more than equal to the states of Virginia and Kentucky, in extent, and of the most valuable lands in the United States.

* How far this article may tend to revive the *proprietary rights* of Lord Fairfax's heirs or devisees, and the Maryland and Pennsylvania proprietaries, may be worthy of more consideration than I have been able to bestow upon the subject.

† The settlements now making in some part of the state of New York by an English gentlemen, whose name, I think, is Pulcney, upon an estate containing about half a million of acres, may serve as an evidence of the probability of this conjecture.

higher interest, or alarmed for the security of his immense property in the European banks, has lately condescended to become a creditor of the United States. The word *subjects* is dropped in this article, and the more comprehensive term *individuals*, is substituted for it: this being *nomen generalissimum*, may be supposed to extend to the *king himself*; for the rule that the king is not *bound by any law*, unless he be specially *named* therein, does not apply to those laws where he is to derive a *benefit* from general words. As this article, therefore, was not so much calculated to *bind*, as to *benefit* him, it was unnecessary, and would have been *indecent* to name him specially. His majesty's example has, there is great reason to believe, been followed by a number of his subjects—I know a gentleman who purchased *half a million of dollars* in the three per cents, in one day, for persons residing in London. The effect of this article will probably be a considerable increase of *British stockholders*.

But this article deserves further consideration in another point of view. When Great Britain, in the course of the late war, began to exercise every act of depredation upon the property of the people of America, as well as cruelty upon their persons, the states, then sovereign and independent, by way of retaliation, thought proper to sequester and confiscate British property in America.* And when his Britannic majesty's ships of war and privateers, commenced their present system of spoliation and aggression on the commerce of the citizens of America, the *house of representatives in congress*, by a very large majority, resolved to sequester British property in the United States, in order to *secure some indemnification* to their suffering constituents. This measure, as was formerly mentioned, was lost in the senate by the *casting vote* of the vice-president. The precedent was alarming, and might be renewed when the vice-president might not hold *the balance in his own hands*. The chief justice of the United States had judicially declared (tho' that opinion was over-ruled) that the states had no right to confiscate or sequester their enemies' property; the envoy extraordinary made no difficulty in giving a diplomatic sanction to these opinions, nor did he hesitate to remove all the horrors which his Britannic majesty may be supposed to have felt, on the score of his money in the funds and banks of the United States.—If national justice were always administered without regard to the *right of the strongest*, very far should I be

* This was done at the "*earnest recommendation*" of Congress, November 27, 1777.—See their journals.

from condemning an article intended to secure private property, and to confirm private confidence. But, every stipulation that abridges the exercise of *defensive measures* by a *weak nation*, how repugnant soever such measures may appear to the ordinary rules of justice, in civil cases, is, in fact, the subjection of such a nation, and all its rights, to the insolence, injustice, and rapacity of the *stronger*.—If a state of war between two nations will justify seizing the property of their respective people, by violence, wheresoever it can be found, will not the same cause justify us in indemnifying ourselves at the expense of our enemy in any other mode? And if the relative force of the two nations renders this impossible by other means, by what refinement in political morality are we forbidden to avail ourselves of such means of retaliation or indemnification as the nature of things permits? Suppose Great Britain still obstinately to persist in her depredations on our commerce, and detention of the western posts; suppose her to renew the war which she formerly waged with such fury and cruelty against America; what act of retaliation could America commit, or how recompense herself for her losses, but by confiscating the property of British subjects, or by carrying the war into Canada? If humanity were to decide which of these measures ought to be preferred, she would probably determine very differently from the envoy extraordinary.—She would tell us, that if satisfaction could be obtained without the effusion of human blood, that mode should be first adopted, rather than to carry havoc, devastation, and murder among a people whose only fault consisted in their being the *subjects of our enemy*, and our nearest neighbours.—Could we draw the lion's teeth and pare his nails, we might treat on terms of mutual reciprocity and equality: but till this can be effected, the stipulation in this article must remind us of that league between the wolves and the sheep, whereby the latter surrendered the dogs, *their only defence*, as hostages to the former. The balance of trade, *already too great* in favor of Great Britain, will hourly accumulate: and if British subjects can hold lands, and possess property in our funds and banks, without danger of loss, we may rest assured that these advantages will be turned to their proper account.—The moment a man becomes a debtor, beyond his ability to pay, his independence is totally lost. It is the same with nations that are, at the same time *weak* and *poor*. Our commercial intercourse with Great Britain being renewed upon the most beneficial footing for her, will render the United States, with the aid of this article, and the preceding, a nation of *debtors*.

both *public* and *private*, to her *merchants*, her *monied men*, her ambitious *land-holders*, and even to her *sovereign* himself.

The preceding articles, it will be remembered, are all permanent. If once ratified, they will be *irrevocable*; for the advantages thereby secured to Great Britain are so great, that she must be struck with blindness, indeed, should she ever agree to rescind one of them.—The seventh, the only one which promises any thing for America, *except admission into the western posts*, has been shown to be inadequate to a full and complete indemnification of the citizens of the United States, for the injuries they have sustained. Nor has Britain yielded any thing in any one of them, for which she has not gained a *full equivalent* and *something more*.—But though it requires very little skill in political arithmetic, to see on which side the balance lies, it may require ages to calculate the amount.

XI. and XII. Though no temporary advantage can ever be deemed an equivalent for permanent disadvantages, such as we have just noticed, it might have been reasonably expected that the succeeding articles of the treaty would have procured some recompence to the United States for such important concessions. It is, however, doubtful whether any one of the remaining articles stipulates for a single advantage on our behalf, for which we do not sacrifice thrice as much as it is worth.—The eleventh article stipulates “that there shall be reciprocal and entire perfect liberty of navigation and commerce under certain limitations and restrictions,” *not one of which* is either a limitation or restriction upon *Great Britain*, but altogether upon the *United States*. For example—ships of *any* burden, belonging to Britain, may freely enter any of the ports of the United States, and bring or carry away *any* commodities they please, and *whither* they please; whilst the freedom of navigation and commerce, by American citizens, is restricted to *vessels not exceeding seventy tons burden*, if bound to the *British West Indies*; all American vessels whatsoever being totally excluded from the British sea-ports on the continent, by the third article already mentioned. This license to trade with the British Islands, is by some persons represented as very important, even under this restriction. From the nature of the case it can only extend to the article of *provisions*, when they are not *prohibited*; for by the laws of England, neither *tobacco*, nor any other production of the United States, except *provisions*, *lumber*, naval stores, and horses, can be imported into the islands from the United States, even in *British bottoms*. Vessels of seventy tons burden are too small for the lumber trade.—The demand for naval stores and horses in the British islands, is not likely to form any

very important branch of commerce with them : the admission of *salted provisions* is altogether *arbitrary*, or, if you please, *discretionary*, depending upon the supplies which can be furnished from Great Britain and Ireland ; the treaty does not alter the case in this respect—they may still be admitted or rejected ; they have been often *admitted*, and as often *prohibited*, within the last ten years ; sometimes the *admission* has been confined to British bottoms ; at others, extended to *all vessels whatsoever*, without limitation as to their burden. I appeal to the repeated proclamations authorizing the importation of *provisions* in *foreign bottoms*, which have appeared in the gazettes of all the islands, and of the United States, for a dozen years past, to prove this fact. It is a most important fact, and shows that the existence of the British sugar colonies depends upon the United States of America. For the policy of Great Britain, ever since the peace, has been to exclude the citizens of America and their vessels from any intercourse or commerce with her sugar colonies ; a relaxation from this policy has never been produced but by the most *cogent necessity* ; the frequent repetition of the proclamations, *inviting our vessels into their ports*, proves this cogent necessity to be *very frequent*, also ; which fully authorizes this conclusion, *that those colonies could not be subsisted without the aid of the United States*. This being the case, it was in our power to *dictate our own terms*, instead of submitting to such as are at once *degrading and destructive* to our *commercial interests*.—We shall be told that the conduct of Britain is agreeable to the *colonial law* of all nations. But this law presupposes that the parent country is capable of supporting her colonies without the aid of any foreign country whatsoever. This is not the case with Great Britain—She must, therefore, submit to reasonable terms from a nation abounding with those things, *without which her colonies cannot exist, or sacrifice her colonies*. This would be equally *unwise, inhuman, and unjust* on her part. The *necessity* of an intercourse between the United States and her colonies was, therefore, altogether on *her part*, though the *submission and restriction* is upon *ours*, only. A decrepid veteran without any weapon for his defence, dictating terms of submission to a robust young soldier with arms in his hands, would scarcely exhibit a more extraordinary instance of successful arrogance, or of abject condescension.—The commerce with the sugar islands was one of those strong holds of negotiation, on the part of the United States, which ought never to have been abandoned. The envoy extraordinary could not have been ignorant of this, nor of the sentiments of a *large majority* of that body to whom, *in conjunction with the senate and the president, it belongs, by the*

constitution, to regulate commerce with foreign nations. His zeal for negotiation seems to have made him lose sight of every other object: and no doubt, from the expedition with which this important treaty was concluded, every obstacle, which might for a moment retard its completion, was instantly waved on the side of the American negotiator.

Not less extraordinary is the stipulation contained in the succeeding clause of the same article, which declares, that during the continuance thereof, the United States will prohibit and restrain the carrying *any melasses, coffee, cocoa, or cotton*, in American vessels, either from the *sugar islands*, or the *United States*, to any part of the world, except the United States. Never was a more humiliating concession proposed or acceded to, in a commercial treaty. The interdiction extends not only to the produce of the English sugar islands, but to similar productions from any other part of the globe. This was a decided stroke at the commerce between America and the possessions of every other nation in the West Indies, whether French, Dutch, Spanish, Danish, or Swedish! Britain supposing the produce of her islands sufficient for the consumption of the United States, or rather, determining, if possible, to limit their consumption to what her islands can supply, thus secures a monopoly by interdicting the exportation of any surplus of their productions, or similar productions of other countries; and moreover, lays a foundation for the right of *searching* all our vessels, and, upon the slightest pretext, detaining or carrying them into her own ports for *adjudication*, if it should appear that they have on board any of these articles *beyond reasonable sea-stores*. Surely by some strange effect of magic, the envoy extraordinary had lost all memory of events subsequent to the year 1763, and conceived himself bound to receive as law, whatever the British secretary of state was pleased to dictate to him! Or was this concession the result of his fears for the fate of the French colonies, that they would either be desolated, or become an appendage to Great Britain? Or did he conceive that such a *restricted* commerce as he has stipulated for with the British colonies, *clogged with restrictions upon our commerce with all other parts of the globe*, was more valuable than all our West India trade put together? Surely the productions of those islands must have been rendered precious beyond measure in the eyes of the envoy extraordinary when he consented to this article!

There is yet another light in which this article must be placed, to give us a full view of its merits. *Congress*, that is, the *house of representatives* and *senate*, with the concurrence of

the *president* of the United States, are the *constitutional* organs for the regulation of commerce. Here, the envoy extraordinary undertakes to regulate it by means of the *president* and *senate, only*, without reference to the *house of representatives*; thus taking upon himself to *new-model the constitution*, or to dictate a law to *congress*. For either the president and senate must *regulate commerce*, pursuant to this article, without the concurrence of the house of representatives, or that house is bound, *volens volens*, to *pass a law pursuant to this article*. Whether that house will manifest the same compliance with the opinions of the envoy extraordinary, as he appears to have shewn to those of the British secretary of state, remains to be seen hereafter.

XIII. Weary of concessions without consideration—of compliances without ostensible motives—and of humiliations too degrading even for colonies, I turn my eyes towards that gleam of liberality which appears, on the part of Great Britain, in the 13th article, by which some conveniencies have been procured for our citizens trading to the East Indies. Yet even here, restrictions evince the jealousy of that nation; no American citizen being permitted to reside in any of her territories in that quarter of the globe, in which she has acquired so extensive an influence; whilst *British subjects* may be *lords of manors* in the United States from generation to generation. The 15th article, expressly reserving to the British government “the right of imposing such a duty as may be adequate to countervail the difference of duty now payable on the importation of European and Asiatic goods when imported into the United States in British or in American vessels,” has, in truth, frittered away the commercial advantages to have been expected from this article, to nothing more than a grant of the ordinary rights of hospitality.

XIV. and XV. The 14th article, relating wholly to the intercourse between the British European territories, and the United States, reciprocally, secures those rights which are common between civilized nations in peace. But the 15th article virtually extends to Great Britain all the commercial advantages granted by America to the most favored nations. The favors of the United States, like those of a lady of pleasure, have been granted to so many, as to be from henceforth beneath the solicitation of any.—The first grant of them to France gained a cordial return of affection: The last grant will probably annihilate the recollection, as well as the value, of the first. To detach the United States from the affectionate attachment to that nation, which gratitude and a variety of concurrent causes had produced, as it has been the constant desire

of Great Britain, was, unquestionably, one of the great objects of the present treaty, as we shall have occasion to observe hereafter.

XVI. and XVII. The former of these articles relating only to the appointment of consuls, I shall pass it over. The latter stipulates, that vessels captured or detained on just suspicion of having on board enemy's property, or contraband goods, shall be brought to the nearest, *or most convenient* port for *adjudication*. The alternative leaves to the *captor* the right of determining between the *nearest* and the *most convenient* port; and the latter will, in all cases, be determined by the *convenience of the captor*, instead of the party arrested. It sanctions the right of *stopping, searching, detaining, and carrying out of the course of her voyage, any vessel belonging to citizens of the United States, during any war that Britain may be engaged in; that is, upon a general average, about one half her time and ours*. It might have been expected that the envoy extraordinary in his great ambition to meliorate the laws and usages of nations, would have insisted, that *free ships should make free goods; that the commerce of a neutral nation should not be interrupted by those at war, except in the case of contraband good carrying to an enemy; that no search should be permitted upon the high seas, under any pretext whatsoever; that no ship of war, or privateer should approach within cannon shot; nor chase nor turn any neutral vessel out of her course; nor send more than two or three men to enter on board of her; and that full faith and credence should be given to the sea letters with which such vessels might be furnished*. Examples of similar stipulations might be found in our treaties with *France, Holland, Sweden, and Prussia*; and even his majesty of *Morocco* has condescended to insert some of them in his treaty with us. But his Britannic majesty's ships of war and privateers are not to be restrained from any measures which their *suspicious* may lead them to pursue, if they "*forbear doing any damage or committing any outrage*;" words of such latitude of import, as to sanctify a thousand injuries and provocations, such as were touched upon under the seventh article, for which no compensation can ever be obtained; or even expected, without pursuing the offender half over the globe. Upon what ground, we may ask, was this distinction made? Are the officers and crews of his Britannic majesty's ships of war and privateers so remarkably observant of the rights of neutral nations, and the laws of courtesy, that we should trust them more than any others? The envoy extraordinary must surely have forgot, that to put a stop to *their insolence and rapacity* was one of the most important objects of *his* mission.

XVIII. Concession following concession fills up almost the whole that remains to be considered of this ill-favored treaty. *Ship-timber, tar, hemp, sails, sheet-copper, and generally whatever may serve directly for the equipment of vessels, unwrought iron and fir plank excepted, are by this article added to the list of contraband goods, though expressly excepted by former treaties with other nations.* Upon what principle was this new concession made to Great Britain, in preference to all other nations? Was it, because these articles are deemed of the first necessity to *France* during the present war? Did the envoy extraordinary recollect that most of these are *staple commodities* of the United States? That to make them *contraband* amounts to an *actual prohibition of the exportation of them in our own vessels*, whenever Great Britain chooses to go to war? Will not the powers at war with Great Britain, challenge an equal right to consider these articles as contraband, and seize and confiscate them in their turn, if destined for our *new, favorite ally*?

The same article admits, that provisions and other articles in general *not contraband*, may, in certain cases, become contraband, according to the existing law of nations. Until the present war with France, the right of interdicting commerce between a neutral nation and an enemy, was, by the *modern law of nations* (a term for which the envoy extraordinary in his *judicial capacity* always affected great respect) confined to the single case of a place *besieged, or blockaded*.* True it is, that *England*, and the *United Provinces*, something more than a century ago, agreed to notify to all states, *not at war with France*, that they would attack, and previously declared *every ship bound to, or coming out of the harbours of that kingdom, lawful prize*. This precedent was copied by the enemies of France in the present war. *Sweden and Denmark*, on the former occasion, *as well as on the latter*, entered into a treaty for maintaining their rights, and *obtaining satisfaction*, and they *obtained it accordingly on both occasions*. America, on the contrary, kisses the rod, and crouches beneath the lash of the insolent dictatress of nations. The effect of this submission will probably amount to a total prohibition of the trade of America, with all nations against whom Great Britain is engaged in a war. There is not in all Europe, and scarcely in the world, a country so little capable of being put into a state of siege, or blockade, as *France*. Yet we have seen her

* The rights of neutral nations in respect to their commerce, and the sense that *our government* entertained of them two years ago, are admirably shown, in a letter from Mr. Jefferson, when secretary of state, to Mr. Pinckney our then minister at the court of Great Britain, dated September 7, 1793. See the papers accompanying the president's message of December 5, 1793, page 147.

formally declared to be in that state; we have, in consequence, seen our commerce with her prohibited, our vessels seized, their cargoes converted to the use of the captors; and our envoy extraordinary has given his sanction to all these proceedings; stipulating only, that in future cases, a *reasonable mercantile profit* (of which the owner has no right to judge) shall be allowed for the cargoes thus diverted from that channel, which the prospect of a beneficial voyage had induced the merchant to pursue; and that the vessels shall be paid their freight. Even the governors of the little West India Islands belonging to Great Britain, assume the right of circumscribing, and prohibiting the commerce of America, by declaring all the French islands, in a state of blockade, whilst they have not force enough to protect their own governments.* How degraded must that nation be, whose commerce may be interdicted by the proclamation of a colonial governor, or a military commander in the service of a foreign nation!

XIX. The nineteenth article stipulates, that the commanders of ships of war and privateers shall forbear doing damage, or committing any outrage on those of the other party; and if they act contrary, they shall be punished and make reparation. I have before noticed the probable effect of this stipulation; it may prevent some *few enormous injuries*, but will not in the least check lesser abuses. That insolence, and those less atrocious acts of vexation and oppression, which the *basbaws of the sea*, and those licensed pirates, *privateersmen*, are so prone to commit, will still continue to be exercised with all the wantonness of conscious security, and impunity. A cruiser belonging to one of the British islands, stops a ship bound to Europe; searches her; rifles her; insults the captain; abuses his seamen; impresses some of them, under pretext that they are British subjects; and after all these atrocities, permits the ship to proceed. What satisfaction can be obtained in such a case? Shall the master of the merchant ship alter his voyage, and go to the port to which the privateer belongs, to obtain reparation? The idea is absurd. He must submit to the ill treatment he has received, and consider his deliverance from the hands of such ruffians, as ample recompence for his sufferings. Had the envoy extraordinary condescended to look into our treaty with *France*, or *Holland*, he might have found an additional article, more effectually calculated to give security to commerce, as

* And such a proclamation, as appears by a late case, has been considered by the court of delegates in England, upon an appeal from Bermuda, to be a sufficient ground to render a vessel liable, though her voyage had been begun and her passage almost finished, before it issued.

well as to the persons of those engaged in pursuit of it, by providing, "That if the ships of one of the parties shall be met with, either sailing along the coasts, or on the high seas, by any ship of war or privateer of the other, the said ships of war or privateers, for the avoiding any disorder, *shall remain out of cannon shot*, from the merchant ship; but may send a boat on board and may *enter her, to the number of two or three men only*, to whom the master shall *exhibit his passport*; and thereupon the merchant ship may pursue her voyage, so as it shall not be lawful to molest, or *search her in any manner, or to give her chase, or to force her to quit her intended course.*" One such article was worth a thousand, stipulating for indemnification from *rovers*, or the punishment of rascals whose vagrant life effectually screens them from the pursuit of justice. Why then was such an article omitted in a treaty with Great Britain? We must seek the cause in that spirit of concession and submission, which breathes through every article of this coup d'essai of the envoy extraordinary.

XX. The reciprocal exclusion of pirates, and punishment of such as may receive, harbour, or assist them, for which this article stipulates, is among the few unexceptionable articles of this treaty.

XXI. How far the first part of this article, prohibiting the people of either party from accepting commissions from the enemies of the other, may be contrary to sound policy, I will not undertake to decide. I rather incline to the opposite opinion; yet I entertain some doubt of its constitutionality, in one respect. The prohibition as to *privateers* corresponds with our treaties with other nations; and it is most devoutly to be wished, that the civilized nations of the globe would agree to suppress so infamous a practice, as that of privateering, altogether; had the envoy extraordinary introduced such a clause into his new diplomatic code, it would have done him no less honor than he expected to derive from the suppression of confiscations, and sequestrations.

XXII. Another article stipulating for due forbearance from reprisals, in case of injuries, forms a proper article in a treaty of amity—but alas! what reprisals has the envoy extraordinary left it in the power of the United States to commit, in case of injuries from Great Britain, even after compensation shall be refused!

XXIII. Secures the rights of hospitality to British ships of war, *in all cases*, in American ports, as also to American *ships of war* (when such things shall hereafter exist) in British ports; the same hospitality is, *in case of distress*, extended to any American

vessel, in British ports not otherwise open to them, under certain regulations and restrictions.

XXIV. and XXV. The former prohibits privateers belonging to an enemy of either party, from arming themselves, or selling their prizes in the ports of the other. This is conformable to our treaties with other nations; the latter stipulates for the admission of ships of war, privateers, and their prizes, into the ports of the respective nations; but these articles are not to be construed, or operate contrary to former existing treaties. Similar provisions are contained in our treaties with France, Holland, &c. It seems to me, however, to be very questionable, whether good policy would not rather have led the United States to discountenance, as much as possible, the practice of *privateers*, at least, resorting to their ports in any case, but that of *absolute distress*. The practice of privateering is a violation of the rights of humanity, and is pregnant with the destruction of every moral principle among individuals. The depredations committed by these *licensed pirates*, have no effect upon the final issue of the war: they are attended with ruin and distress to thousands of innocent *individuals*, without affecting the strength of the nation; and the calamities they bring upon peaceable and harmless men, are often more numerous and destructive, than any of the *national* operations in war. If they are admitted into the ports of neutral nations, their presence is a restraint upon its commerce; for it is well known that the purpose of their visit, is to act the *spy* upon their intended prey; for which they often lie in wait even at the entrance of the port where they have been hospitably received, and supplied with the means of pursuing so nefarious an occupation.

The same article also stipulates for the protection of the ships of each party within cannon shot of the coasts, or within the bays, rivers, or ports of the other. This article is conformable to former treaties; yet I doubt how far the United States can otherwise comply with it, than by making satisfaction for what they have no power to prevent.

XXVI. This article stipulates for the security of the persons and effects of merchants, in the event of war between the two nations; in which case, while they behave peaceably, and commit no offence against the laws, they may continue to reside and carry on their trade; but if their conduct should render them suspected, and the respective governments should think proper to order them to remove, they shall be allowed twelve months to do so, with an exception, as to such as shall act contrary to the established laws. There is a spirit of liberality in this article,

highly conformable to that policy which commercial nations ought to promote. It is, moreover, in appearance, perfectly reciprocal. The misfortune is, that America has scarcely a merchant residing within the British dominions, being excluded from all her colonial territories, by stat. 12. Car. 2. and from the East Indies by the present treaty; whilst our *ports*, our *towns*, nay, every part of our country, swarms with British merchants. The benefit of this article to the citizens of the United States, in comparison of those of Great Britain, is as a *cent* to an *eagle*.

XXVII. Murderers, and persons guilty of forgery, are to be given up, on both sides. The prevention of *moral evil* is an object worthy the attention of politicians, as well in their national compacts, as in their civil institutions. This article, therefore, if it can be reconciled to the federal constitution, which is doubtful, must receive our cordial approbation, and together with the 20th and 21st, may be considered as founded in perfect reciprocity and equality. Happy should I have been to bestow the same encomium upon *all* the preceding.

XXVIII. The last article provides for the duration of the former: the first ten, as we have before observed, are permanent; the twelfth is to continue two years from the end of the war, in which Britain is now engaged; the remainder are limited to twelve years from that period. Happily for the United States, the article limited to the shortest duration, proved a stumbling block to the ratification of the whole. Should the president of the United States conceive himself to be bound by the act of the senate, it has been supposed to be in the power of his Britannic majesty to ratify the *perpetual articles*, without acceding to any amendment of the article objected to. Whether this was foreseen cannot be known. It is, however, presumable that the wisdom of the president will guard him against any act which might commit the United States so far. Whilst *any* article of a treaty is under discussion, the *whole* must be considered as in a state of negotiation and discussion; and for this reason, because it is possible the object of the one party in acceding to all the other articles, was merely with a view of obtaining such terms, as are insisted on in that one article. Viewing the subject in this light, and that it is still practicable, in the course of negotiation, not only to obtain the rescission of *some*, but the amelioration of *several* of those articles which the zeal of the envoy extraordinary prompted him to accede to: and, moreover, to procure the admission of such as appear to be indispensably necessary to constitute a part of the proposed treaty; and that the senate must again act upon the whole treaty so formed,

I shall notice some things which it does not contain : and which, to a less liberal negociator, might have appeared, not altogether unworthy of attention.

1. It *does not contain* any stipulation for compensation on account of the detention of the western posts, twelve years after they were to have been given up, by treaty. I have heard that the value of the fur trade formerly carried on by the citizens of the United States, amounted yearly to near a million dollars. The British magazines, some few years past, stated the value of the Canadian fur trade at as many pounds sterling. I cannot presume to be correct in this, as I write from memory. But if either sum be near the truth, this article would have amounted to some *millions of dollars*, in account *against his Britannic majesty*.

2. It *does not contain* any stipulation of compensation on account of the negroes, and other property belonging to the citizens of the United States, carried away in violation of the seventh article of the treaty of peace. The value of this concession (I know not with what accuracy) has been estimated at *two millions of dollars*,* more, in favor of his Britannic majesty.

3. It *does not stipulate* for any compensation to be made to the citizens of the United States, for the *arbitrary, violent, and insolent detention, imprisonment, and impressment* of their persons (while peaceably engaged in commerce) on board the ships of war, and privateers of Great Britain, during the present war with France ; nor for the manifold other personal injuries received from them. Were this article to be estimated and assessed by a jury of freemen, such, as to the honor of the British nation, have often appeared in their courts of judicature, the damages would probably be more than commensurate to those which may be awarded for the spoliations on our commerce.

4. It *does not provide* for the *prevention* of such nefarious acts in future. Whilst Americans speak the same language with the subjects of Great Britain, there will not be wanting a colour for such acts of violence and oppression. Our treaty with Holland stipulates, “ that *merchants, captains and commanders of vessels, public or private, may freely take into their service, and receive on board their vessels, seamen or others, natives or inhabitants* of the respective countries.” The concessions made to Great Britain would surely have entitled us to expect a similar

* I have lately been informed, that this estimate, independent of twelve years interest, is too low. My authority adds, that this article, after *some discussion*, was *entirely given up*, by the envoy extraordinary !!!

clause in the treaty with her—At any rate, some stipulation which might secure the citizens of America, whether on the high seas, or on our coasts, and *even within our own bays and ports*, that *personal liberty* which hath been so often violated, with impunity, by British sea officers and privateersmen, during the present war between his Britannic majesty and France, seems absolutely necessary; otherwise the citizens of America will, by *their sufferings*, be made parties in every war in which *arrogance, ambition, revenge*, or other motives, may prompt his Britannic majesty to engage.

5. It *does not stipulate* that the Indians, inhabiting within the territory, or on the borders of the United States, shall not receive any aid or supply, whatsoever, in arms, or other necessities for war, from the British government or their merchants, &c. in case of war or hostility between them and the United States.

6 It *does not stipulate* that Great Britain (instead of exciting the Algerines to annoy our commerce, and enslave our citizens, as we have too much reason to believe she has done) should use her good offices with them in favor of the United States.

7. It *does not stipulate* for the free navigation from the *lakes to the Atlantic*, through the waters immediately communicating therewith.

It may be asked—What right have we to require that Great Britain should accede to the three last mentioned articles?—The answer is not difficult:

1st, The Indians *within* the territories of the United States, are, in respect to all other nations, but more especially Great Britain, who formerly claimed, and has now renounced, the sovereignty over them, *subject to the United States*. The Indians themselves, in their several treaties with the United States, recognize *their sovereignty*, and acknowledge themselves under their *protection*. As between the United States and all other nations, the Indians are to be considered as a *tributary, dependent* people. Consequently the United States have a right to stipulate that other nations shall not aid them against the United States. They had *good reason* to suspect Great Britain of having lately furnished them with such aid: they had *good reason* to suspect that the hostilities lately practised by these people, upon our western frontiers, had been *fomented*, nay, even *conducted* by the agents of Great Britain.—Let the letters of the present secretary of state to Mr. Hammond, the British minister, and the message from the president of the United States to congress, upon this subject, be my vouchers. Having reason to suspect such ill-offices to have been done us, we had a right to insist

that a nation to whom we were about to bind ourselves, by more than ordinary ties of amity, should, with good faith, engage neither to repeat such *ill-offices*, nor suffer them to be repeated by any of her subjects. We had a right to expect an immediate assent to such a proposition from a nation really disposed to enter into a state of amity with us.—Good policy would, moreover, have dictated the reservation of the right of prohibiting the importation of arms, ammunition, and warlike stores, into the United States by way of the lakes, although such importation was not prohibited elsewhere. Under the existing article no such prohibition can be made, unless it be general. The British subjects, settled at the ports of the United States, on the lakes, may now “freely, for the purposes of commerce, import all such articles, and transport them whithersoever they think proper, and vend them to whomsoever they please, within the territories of the United States”—that is, to Indians as well as others. It is not improbable that a few years may shew us more clearly the full effect of this generous confidence and indulgence.

2d, If the examples of France and Holland may be cited as precedents, it will be found that the treaties with *both*, stipulate for their good offices with the states of Barbary.—The strong ground that there is to suspect his Britannic majesty’s ill-offices, in that quarter, as well as with the Indians, might have suggested to the envoy extraordinary the good policy of engaging a monarch so remarkable for his good faith, to desist from his persecutions, and to promise assistance in procuring the enlargement of our fellow citizens who have been reduced to a state of slavery by those barbarians.

3d, The navigation from the lakes into the Atlantic is a concession which appears to stand nearly upon the same ground as the free navigation of the Mississippi. In a treaty, where, among numberless advantageous concessions, the free navigation of *all* our tide-waters is granted, it might have been reasonably expected that egress and ingress should have been permitted between the waters of the lakes, and those of the Atlantic. For without such a communication between the different ports of the United States on the western waters, and upon the Atlantic, the residents on the former must be constrained to export all their commodities, which cannot be brought down the Hudson, or other less convenient routes, to Great Britain; and that too, in British ships: for the vessels of the United States not being permitted to enter the St. Lawrence from the sea—and no vessel being permitted to trade from Canada, except such as are British, the citizens of America (if any should ever obtain

a settlement on the lakes) must export all their bulky commodities, in the ships of that nation, to Great Britain or her colonies only. This, therefore, must operate as a monopoly in favor of Great Britain, in respect to all bulky articles, and gives her a preference in every other: and though in this case we had not the same power of dictating our own terms, as in the communication with the West India islands, so able a negotiator as the envoy extraordinary was *supposed to be*, might assuredly have obtained a concession in this place, as a retribution for the favors granted to Great Britain in the other. This was the rather to have been expected, as the envoy extraordinary could not but be aware that Spain would avail herself of so good a reason for not yielding to our demand of the free navigation of the Mississippi. Will not our concessions in this treaty, strengthen the tone of her refusal? When the envoy extraordinary, then minister for foreign affairs, endeavoured to persuade congress to cede the navigation of the Mississippi to Spain, for twenty-five years, he contended that the acceptance of such a concession on the part of Spain, would operate as a tacit acknowledgment of the right of the United States, ever after. I will not controvert this diplomatic inference, though, probably, the court of Spain would not have been so complaisant.—But in the treaty with Great Britain, we see nothing that could, either immediately or eventually, give us the chance of a similar benefit. On the contrary, the subject is consigned, in silence, to perpetual oblivion.

From the preceding investigation of this treaty, are we not fully justified in drawing the following conclusion:—That

As a treaty of AMITY, it is *partial* and *defective* ;
 As a treaty of COMMERCE, it is *not reciprocal* ;
 As a treaty of NAVIGATION, it is *humiliating* ;
 And it is, in *other respects*, *destructive* to the *prosperity*,
security, and *independence* of the United States; and *sub-*
versive of the CONSTITUTION ?

1. It is *partial*, and *defective* as a treaty of *amity* ; because, while it provides the *fullest satisfaction* for the pretended causes of complaint, on the part of Great Britain*, *no adequate reparation* is obtained for former injuries, and breaches of faith towards the United States†, nor any security against a wanton

* See remarks on article 6.

† See remarks on article 7. See also page 303.

repetition of them*: and because there is not that interchange of good offices secured in this, as in former treaties between the United States and other nations.†

2. As a treaty of commerce it is not reciprocal; because it concedes to the merchants, subjects, and ships of Great Britain, greater privileges than are granted to the citizens and ships of the United States within the territories of Great Britain.‡

3. As a treaty of navigation it is humiliating; because it exposes the vessels belonging to citizens of the United States, to be *stopped, searched, and turned out of their course upon suspicion*, in cases where those of Great Britain cannot be exposed to similar inconveniencies||; and because, by limiting the size of our vessels, in certain cases, it has an evident tendency to degrade the maritime interest and force of the United States.||

4. It is, in other respects, destructive to the prosperity, security and independence of the United States; because it cedes to the subjects of a foreign nation, the right of soil within an undefined extent of territory, whose value and importance to the United States is conceived to be immense§; because it admits aliens to hold and inherit lands within the United States, and to reside therein, whilst they may be subjects, owing allegiance to a sovereign actually engaged in war with the United States§; because it tends to detach us from our ancient ally, the French nation, by giving a preference to her most inveterate enemy¶: and because it deprives the United States of the right of self-defence, and the means of retaliation in case of hostility**, or unjust aggression from a nation whose arrogance and injustice we have more than once experienced.

5. It is subversive of the constitution of the United States; because it establishes a tribunal incompatible with the constitution, and assigns to it jurisdiction in cases expressly vested by the constitution in the judicial courts of the United States††; and because the decisions of this tribunal are paramount to the judgments of the constitutional courts††; and because it tends to wrest from the *whole body of congress* its constitutional powers, and to transfer the same to a part of that body only; or

* See remarks on articles 7. and 19. See also page 303.

† See page 303, 304, 305.

‡ See remarks on articles 3. 12. 13. 26.

|| See remarks on articles 12. 17.

§ See remarks on article 9.

¶ See remarks on article 18.

** See remarks on article 10.

†† See remarks on article 6. and note thereon.

to subject the measures of *one of the component parts of congress* to the absolute controul of the other two.*

A variety of other observations, equally important, might, no doubt, have suggested themselves to a person who had full leisure to examine this subject, and may be met with in the several publications that have already appeared. Without pretending to abilities extensive enough to embrace the whole, I shall now hasten to a conclusion.

I am well aware that it will be contended by the advocates for the treaty, that a refusal to ratify it will bring on a war; or must continue matters between us and Great Britain, in their present state of unredressed wrongs, and a passive acquiescence therein. I shall add a few words by way of answer.

1. As to the danger of producing a war. 1st, The refusal to enter into a state of amity, or strict commercial connexion, or to form a treaty on any subject, with a nation with whom we are at peace, unless such refusal should amount to a denial of just compensation for injuries complained of, is no cause of war between nations. Whenever Great Britain may choose to commence a war with the United States, she will not want a pretext. At present the treaty itself is the most unequivocal proof, that she hath scarcely the shadow of complaint; for the cases to which the sixth article can extend, even with all the latitude which the liberality of the envoy extraordinary hath given it, are not attributable to the want either of national faith or justice, but to the operation of those means of self-defence which the law of nations permits, or of general laws, founded on the emergencies of the times. The detention of the western posts, alone, would more than balance the account, in a single year, if ~~stated~~ according to the principles of justice. As to the captures made within the jurisdiction of the United States, or by vessels armed therein, Mr. Jefferson's letter shows the readiness of our government to remove all cause of complaint, on that head. 2d, Great Britain derives such immense advantages from her commerce with America, that nothing short of a state of lunacy could prompt her to interrupt it, for the sake of reparation on either of the before mentioned accounts. 3d, The immense property which her merchants, her monied men, and even her *sovereign* holds in the funds and banks of the United States, or have due to them from individuals, is, *until the present treaty shall be ratified*, a further security against those hostile aggressions, to which the

* See remarks on article 12. last part.

fear of sequestration, or confiscation, gave so sudden and unexpected a check. 4th, She has her hands so full already, that, much addicted as she is to hostility, she will, probably, for the present, avoid increasing the number of her enemies.

2. As to the redress of wrongs. This is so partial and inadequate in the present treaty, that no great injury can accrue from delaying to accept it; nor does the treaty contain such security against the repetition of them, as should prompt us, on that account, to accept of the partial compensation that it holds forth. Much less are the compensation and security provided by the treaty, such as ought to be accepted in lieu of *those claims* which are passed over in *silence*. The surrender of the western posts, were it not by the terms of this treaty an object greatly diminished in its importance to the United States, is an event still so *remote* (not to add *uncertain*) as not to justify the precipitate adoption of a measure calculated to impair the value of the acquisition, or render it totally useless.

3d, The suspension of the 12th article, by the advice of the senate, having effectually retarded the final ratification of the treaty, the same train of negotiation which must be resorted to, for the adjustment of that article, so as to be acceptable to the senate, may doubtless be recurred to for *adjusting other objectionable points*.

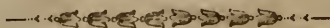
No inconvenience, therefore, can reasonably be apprehended from the *non-ratification* of the treaty in its present form. Having been communicated to the people, the executive are now better able to form a judgment of the public mind, and to weigh objections which perhaps had not before occurred; and the people of the United States with confidence hope, that the *president* will not only attend to their reasons, but pay respect to the *general will of that people*, whose affectionate confidence and authority he possesses on the present momentous occasion. How far these remarks may accord with the *general wishes and sentiments* of the people, it remains for *him* to determine.

When the constitution of the United States was adopted in *Virginia*, the convention, among the other amendments, proposed, "That no commercial treaty shall be ratified without the concurrence of two-thirds of the whole number of the members of the senate; and no treaty, *ceding*, contracting, or suspending the *territorial rights* or claims of the United States or any of them; or their or any of their rights or claims to fishing in the American seas, or *navigating the American rivers*, shall be made, but in cases of the most urgent and extreme necessity; nor shall any *such treaty* be *ratified without the concurrence of*

three-fourths of the whole number of members of both houses respectively.—North Carolina proposed the same amendment. On the present occasion, the people of the United States will be led to consider, how far some amendment to this part of the constitution is become necessary.

COLUMBUS.

Virginia, August 6, 1795.



PLYMOUTH PROTEST.

WHEREAS at a meeting of the inhabitants of the town of *Plymouth*, on the 28th day of October inst. “for the purpose of taking into serious consideration the treaty entered into by the president, and twenty senators, and the government of *Great Britain*,” it was hastily determined to dispense with the legal qualifications of voters; in consequence of which determination, a large number of the inhabitants immediately withdrew themselves, conceiving the meeting to be no longer a legal meeting of the town. Notwithstanding which, sundry persons remained, and calling themselves the town of *Plymouth*, proceeded to pass a resolution, reprobating in strong and indecent terms, the conduct of the supreme executive of the United States. We, the subscribers, inhabitants of the town of *Plymouth*, holding in just abhorrence such *irregular* proceedings, think it our duty, *publicly* to manifest our “*marked and pointed* disapprobation” of the same, for the following reasons:—

First, Because the treaty having received the sanction of the constituted authorities (so far as depends on the decision of those authorities) has become, in the language of the constitution, “the supreme law of the land”—any attempts, therefore, to counteract its operation, is an open and avowed opposition to the general government, and highly alarming to the peace of the community; as the insurrection in the western counties of *Pennsylvania*, probably originated in meetings conducted with *equal* temper and moderation.

Second, Because the persons assembled at this meeting were incompetent to decide on the merits of so complex an instrument, as the treaty, very few of them ever having seen or read it; and every thing relative to the whole business, being *previously* prepared by the original movers of the meeting, who, in all instances, have been hostile to the federal constitution and the administration of it, from its first establishment.

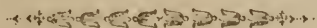
Third, Because such meetings, and the efforts made to convene them, by practising on the passions of the honest, though uninformed, are, in the extreme, dangerous in a republican

government, having a direct tendency to introduce the empire of *licentiousness*, which is only a *short* prelude to the more *permanent* one of despotism.

Fourth, Because the strictures made on the treaty, in the aforesaid resolutions, are a mere repetition of certain inflammatory sentiments, which have been echoed and re-echoed to the public; and while they contain the most unfounded, indiscriminate censure on illustrious and amiable patriots, whose important, meritorious services, rendered their country, ought to endear them to every friend of it, pay the highest eulogium to *Stephens Thomson Mason*, a senator of the United States, for a notorious breach of official confidence.

October 30th, 1795.

(Signed by Seventy-two Names.)



At a Meeting of the Inhabitants of the County of Westmoreland, (Virginia) convened, in consequence of written Invitations circulated through the County, for the purpose of taking the Opinion of the People on the Treaty lately concluded between the United States and the British Nation, September 29th, 1795.

JOSEPH PIERCE, Esquire, Senior Magistrate, in the Chair.

THE treaty was read—and, after some explanations of its object and tendency, the following resolutions were entered into, without a dissenting voice :

Resolved, That we continue to possess undiminished confidence in our government ; and that we sincerely believe its due preservation, in all its parts, essential to our rights, liberties, and happiness.

Resolved, That we deem it the duty of all good citizens, to check, by every lawful means, the wicked and cunning machinations employed with industry and art, by certain individuals, their tools, and adherents, to withdraw the confidence of the people from their government, without which confidence, no free political system can long endure ; and that with deep regret, we have marked a certain set of men, exerting themselves on every occasion, which, in the course of things, has presented itself, for the obvious purpose of destroying a government, established by a majority of freemen, necessary to each others happiness, and who have experienced a wonderful prosperity under the practice thereof.

Resolved, That in the late negotiation with Great Britain, its primary object, the preservation of peace, has been com-

pletely effected, which, of itself, is all-important; and that very considerable additional good has also been acquired by the surrender of the western posts, which leads to the termination of Indian warfare, and compensation for the spoliation on our commerce.

Resolved, therefore, That we feel ourselves perfectly satisfied with the government of the United States in this late transaction; and are fully persuaded, that the same signal wisdom and love of country which has invariably marked the conduct of the president, and eminently produced good to his fellow citizens, will be found to have directed his councils throughout his arduous administration—and we do, for ourselves, determine to support and maintain, with our lives and our fortunes, the constituted authorities of our country, against foreign and domestic enemies of every sort and description.

JOSEPH PIERCE, Chairman.

PRESIDENT'S ANSWER.

JOSEPH PIERCE, Esq.

Sir,

I HAVE received your letter of the 29th ult. covering resolutions of a meeting of the inhabitants of the county of Westmoreland relative to the treaty with Great Britain.

The approbation therein given of this measure, and the assurances of supporting the constituted authorities of our country, cannot but be pleasing to all who know the value of regular government.

No wish, while I fill the office I now have the honor to hold, can be more ardent, than that the acts of my administration should give satisfaction to my constituents. The contrary will always give me pain. I know but one sure method to merit the first, or to avoid the latter, and that is, to pursue steadily such measures (of an executive nature) as appear to be most conducive to their interest and happiness. This, to the best of my judgment, has been my invariable endeavor; and I cannot but hope that the ratification of the treaty (agreeably to the advice and consent of the senate) will be viewed in this light, when it is better understood than it seems to be at present.—For the expression of personal confidence in me, I feel very sensibly.

I am, Sir, with due respect,

Your obedient,

GO. WASHINGTON.

United States, 9th Oct. 1795.

